Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 18 AUGUST 8, 1984 No. 32

This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price: $3.75 (single copy domestic); $4.70 (single copy foreign). Subscription price: $95.00 a year domestic; $118.75 a year foreign.

U.S. Customs Service

Treasury Decisions

(T.D. 84-153)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented figures in parentheses immediately following, which has been discountinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: July 18, 1984.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Alaplex Transportation, Inc., P.O. Box 454, Boaz, AL; motor carrier; Reliance Insurance Co.	Apr. 30, 1984	June 13, 1984	Savannah, GA $25,000
Apache Motor Freight, 30465 Ecorse Rd., Romulus, MI; motor carrier; Insurance Co. of North America D 6/22/84	July 20, 1972	Aug. 3, 1972	Detroit, MI $50,000
Arkansas-Best Freight System, Inc., 1000 S. 21st St., Fort Smith, AR; motor carrier; Insurance Co. of North America (PB 6/9/83) D 6/14/84 [1]	June 9, 1984	June 14, 1984	New Orleans, LA $25,000
Beacon Fast Freight Co., Inc., 520 Bodwell Street Extension, Avon, MA; motor carrier; The Hanover Ins. Co. (PB 5/11/76) D 5/11/84 [2]	May 11, 1984	June 19, 1984	New York Seaport $100,000
Bekins Van Lines, Co., 333 South Center St., Hillside, IL; motor carrier; Hartford Accident & Indemnity Co. (PB 9/20/83) D 5/6/84 [3]	Apr. 26, 1984	May 7, 1984	Los Angeles/Long Beach, CA $300,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Big Wheels Transport & Leasing Ltd., P.O. Box 275 Kensington, PE, Canada; motor carrier; State Surety Co.	June 12, 1984	June 12, 1984	Portland, ME $25,000
Butler Trucking Co., Route 970, P.O. Box 88, Woodland, PA; motor carrier; Washington International Ins. Co.	May 30, 1984	June 8, 1984	Buffalo, NY $25,000
Carolina & Northwestern Railway Co., P.O. Box 1808, Washington, D.C., rail carrier; Insurance Co. of North America (PB 6/1/82) D 6/18/84 [4]	May 30, 1984	June 18, 1984	Norfolk, VA $50,000
Centurion Auto Transport—see: Shaft, Inc.			
Century Motor Freight, Inc., 2160 Mustang Dr., St. Paul, MN; motor carrier; The Travelers Indemnity Co. D 7/2/84	May 3, 1982	May 21, 1982	Duluth, MN $25,000
Collins Moving Systems, Inc., 904 West Morgan St., Kokomo, IN; motor carrier; Reliance Ins. Co.	May 25, 1984	June 13, 1984	Cleveland, OH $50,000
Combs Airways, Inc., d/b/a Combs Freightair, 3390 Syracuse St., Denver, CO; air carrier; The Aetna Casualty & Surety Co. D 6/21/84	May 27, 1982	Nov. 17, 1982	St. Louis, MO $50,000
Combs Freightair—see: Combs Airways, Inc.			
Cooperativa de Transporte Camineros de Arrastre del Muelle de Mayaguez, P.O. Box 3170, Marina Station, Mayaguez, PR; motor carrier; Puerto Rican-American Ins. Co.	Apr. 11, 1983	June 12, 1984	San Juan, PR $25,000
F & S Distributing Co., Inc., 4444 E. 26th St., Los Angeles, CA; motor carrier; Liberty Mutual Ins. Co.	May 14, 1984	June 8, 1984	Los Angeles/Long Beach, CA $50,000
Grane Transportation Lines Ltd., 1001 S. Laramie Ave., Chicago, IL; motor carrier; Aetna Casualty & Surety Co. (PB 6/16/82) D 6/16/84 [5]	June 16, 1984	June 16, 1984	Chicago, IL $50,000
Hudd Distribution Services, Inc., 2679 E. El Presidio St., Long Beach, CA; motor carrier; Old Republic Ins. Co.	Mar. 13, 1984	June 7, 1984	Los Angeles/Long Beach, CA $50,000
Jay Jay Forwarding Service, Inc., 165 Milk St., Boston, MA; motor carrier; Peerless Ins. Co. (PB 5/14/83) D 6/8/84 [6]	May 14, 1984	June 8, 1984	Boston, MA $25,000
Magann Carolina, Inc., P.O. Box 1029, Murrells Inlet, SC; motor carrier; United States Fidelity & Guaranty Co.	Mar. 27, 1984	June 11, 1984	Charleston, SC $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Mobile Express, Inc., 6000 Gum Springs Rd., Longview, TX; motor carrier; The Continental Ins. Co. D 6/12/84	Apr. 6, 1983	Oct. 12, 1983	Houston, TX $25,000
Murphy World Wide Transportation Services, 3434 State Rd., Bensalem, PA; motor carrier; American Casualty Co. of Reading, PA D /6/30/84	Sept. 8, 1982	Nov. 12, 1982	Philadelphia, PA $25,000
Norfolk Express Management Group, Inc., P.O. Box 1364, Chesapeake, VA; motor carrier; Firemen's Insurance Co. of Newark, NJ (PB 2/22/82) D 6/18/84 [7]	Mar. 26, 1984	June 18, 1984	Norfolk, VA $25,000
Pacelli Bros. Transportation, Inc., 119 Trowel St., Bridgeport, CT; motor carrier; The American Ins. Co.	June 12, 1984	June 15, 1984	Hartford, CT $50,000
Portland Pipe Line Corp., 30 Hill St., South Portland, ME; pipeline; Insurance Company of North America (PB 1/15/84) D 6/8/84	June 8, 1984	June 8, 1984	Portland, ME $200,000
Putman Transfer and Storage Co., 1705 Moxahala Ave., Zanesville, OH; motor carrier; The Buckeye Union Insurance Co.	May 16, 1984	June 13, 1984	Cleveland, OH $50,000
Quick Transport, Inc., 5320 Augusta Rd., P.O. Box 4216, Port Wentworth, GA; motor carrier; Insurance Company of North America	Apr. 2, 1984	May 1, 1984	Savannah, GA $25,000
Red Arrow Corp., 4530 Woodson Rd., St. Louis, MO; motor carrier; The American Ins. Co.	May 23, 1984	June 15, 1984	St. Louis, MO $50,000
Sea-Mar Services, Inc., 2111 N. Pace Blvd.; P.O. Box 18729, Pensacola, FL; motor carrier; The Travelers Idemnity Co.	June 7, 1984	June 13, 1984	Mobile, AL $25,000
Service Express Transport, Ltd., 2929 4th Avenue South, Minneapolis, MN; motor carrier; Protective Ins. Co. (PB 5/17/83) D 6/14/84 [8]	June 1, 1984	June 14, 1984	Minneapolis, MN $25,000
Shaft, Inc., d/b/a Centurion Auto Transport, 3370 Old Kings Rd., Jacksonville, FL; motor carrier; Reliance Ins. Co. (PB 6/13/83) D 6/8/84 [9]	May 21, 1984	June 8, 1984	Tampa, FL $25,000
Shanahan Freight Co.—see: TIV Enterprises Inc.			
Short Freight Lines, Inc., 459 S. River Rd., Bay City, MI; motor carrier; Washington International Ins. Co. D 6/30/84	Oct. 27, 1981	Nov. 12, 1981	Detroit, MI $50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
John Soland d/b/a/ Vanlar International Warehousing, 9069 River Rd., Pennsauken, NJ; motor carrier; Washington International Ins. Co.	May 21, 1984	June 1, 1984	Philadelphia, PA $25,000
TIV Enterprises Inc., T/A Shanahan Freight Co., 1649 Haddon Ave., Camden, NJ; motor carrier; American Casualty Co. of Reading, PA D 7/6/84	Jan. 31, 1983	Feb. 3, 1983	Philadelphia, PA $100,000
Trans Modal Enterprises, Inc., 801 West Artesia Blvd., Compton, CA; motor carrier; Washington International Ins. Co.	May 7, 1984	June 7, 1984	Los Angeles/Long Beach, CA $50,000
Trans States Lines, Inc., 6815 S. Jenny Lind, Fort Smith, AR; motor carrier; Insurance Company of North America (PB 6/9/83) D 6/14/84 [10]	June 9, 1984	June 14, 1984	New Orleans, LA $25,000
Vanlar International Warehousing—see: John Soland			
West Coast Warehouse Corp., P.O. Box 258, Long Beach, CA; motor carrier; Insurance Company of North America (PB 5/8/81) D 5/10/84 [11]	May 10, 1984	May 11, 1984	Los Angeles/Long Beach, CA $50,000

[1] Surety is St. Paul Fire & Marine Ins. Co.
[2] Surety is American Casualty Co. of Reading, PA.
[3] Surety is Insurance Co. of North America.
[4] Surety is Fidelity & Deposit Co. of Maryland.
[5] Surety is Insurance Co. of North America.
[6] Surety is The Continental Ins. Co.
[7] Principal is Sprint Container Service, Inc.
[8] Surety is Continental Western Ins. Co.
[9] Principal is Shale Auto Transport, Inc.
[10] Surety is St. Paul Fire & Marine Ins. Co.
[11] Surety is St. Paul Fire & Marine Ins. Co.

BON-3-03
217148

GEORGE C. STEUART
(For Edward B. Gable, Jr., Director,
Carriers, Drawback and Bonds Division).

(T.D. 84-154)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued January 24, 1984, to April 11, 1984, inclusive, pursuant to Subpart C of Part 191, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified ar-

ticles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

File: 217079.

Dated: July 16, 1984.

GEORGE C. STEUART
(For Edward B. Gable, Jr., Director,
Carriers, Drawback and Bonds Division).

(A) Company: AAR Corp., Brooks and Perkins Division
Articles: Aluminum skinned pallets
Merchandise: Aluminum sheet
Factory: Cadillac, MI
Statement signed: November 30, 1983
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: New York, January 24, 1984

(B) Company: Boyle's Famous Corned Beef Co.
Articles: Beef top rounds, cooked
Merchandise: Beef top rounds, uncooked
Factory: Kansas City, MO
Statement signed: April 2, 1984
Basis of claim: Used in, less valuable waste
Rate forwarded to Regional Commissioner of Customs: Chicago, April 11, 1984

(C) Company: Celanese Corporation, Celion Carbon Fibers Division
Articles: Carbon Fibers
Merchandise: Polyacrylic Nitrile Fiber
Factory: Rock Hill, SC
Statement signed: November 28, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, February 28, 1984

(D) Company: Continental Can Company, Inc.
Articles: Aluminum alloy cans, can bodies, and can ends
Merchandise: Aluminum alloy sheets in coils designated and substituted by Aluminum Association number
Factories: As listed in attachment 1 to statement
Statement signed: July 13, 1983
Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, January 25, 1984

(E) Company: Eli Lilly and Co.
Articles: Dextro Carbinol Base (Darvon)
Merchandise: Hexane; Camphor sulfonic acid
Factory: Lafayette, IN
Statement signed: June 21, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Chicago, January 24, 1984

(F) Company: Eli Lilly and Company
Articles: Acyl MDB amine hydrochloride and Ethyl cinnolone nitrile derivative
Merchandise: Dimethylformamide, acetyl-chloride, methylene chloride cyclohexane stabilized, and isopropyl alcohol
Factory: Lafayette, IN
Statement signed: October 27, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Chicago, February 3, 1984

(G) Company: Eli Lilly and Company
Articles: Fenoprofen calcium (Nalfon), Fenoprofen calcium for Japan (Nalfon) Nalfon 200 Pulvule (200 and 300 MG), and Nalfon Tablet (600 MG)
Merchandise: Hexane, dimethylformamide, Thionyl chloride, Methylene chloride cyclohexane stabilized, 3-bromoacetophenone, acetophenone, and calcium chloride
Factories: Lafayette and Indianapolis, IN
Statement signed: November 1, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Chicago, February 8, 1984

(H) Company: Esterville Foods, Inc.
Articles: Liquid whole eggs, whites and yolks; frozen whole eggs, whites and yolks; liquid or frozen egg yolks with sugar or salt added
Merchandise: Chicken eggs
Factory: Estherville, IA
Statement signed: December 27, 1983
Basis of claim: Used in, less valuable waste, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to Regional Commissioner of Customs: Chicago, January 24, 1984

(I) Company: Flor-Quim, Inc.
Articles: Hexyl Cinnamic Aldehyde
Merchandise: Octyl Alcohol (n-Octanol)
Factory: Patillas, PR
Statement signed: November 18, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, February 7, 1984

(J) Company: FMC Corporation—Agricultural Chemical Group
Articles: Carbofuran insecticide, DV Methyl Ester, Methyl Dimethyl Pentenoate, Permethrin technical and formulated insecticide, Cypermethrin technical, Carbosulfan insecticide formulation, Cypermethrin insecticide formulation, and Cis-Cypermethrin 95/5
Merchandise: Ortho Nitro Phenol; Trimethyl-orthoacetate; 3-Methyl, 2-butene-1-op Sodium Methylate; Carbosulfan Technical; Cypermethrin Technical; and Cis-Cypermethrin Technical
Factories: Baltimore, MD; Opelousas, LA; Fresno, CA; Middleport, NY; Jacksonville, FL; Wyoming, IL, and Malaga, NJ
Statement signed: January 3, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, February 2, 1984
Revokes: T.D. 82-120-D

(K) Company: Howmet Turbine Components Corp.
Articles: Titanium alloy castings
Merchandise: Titanium alloy billet
Factories: Whitehall, MI; Hampton, VA
Statement signed: October 4, 1983
Basis of claim: Used in, less valuable waste
Rate forwarded to Regional Commissioner of Customs: New York, February 2, 1984

(L) Company: ICI Americas Inc.
Articles: Indiago Paste
Merchandise: Indigo N Lumps
Factory: Dighton, MA
Statement signed: January 10, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), February 2, 1984

(M) Company: Koeze Company
Articles: Peanut butter
Merchandise: Peanuts
Factory: Wyoming, MI
Statement signed: December 19, 1983
Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Los Angeles (San Francisco Liquidation), February 7, 1984

(N) Company: Latas De Aluminio Reynolds, Inc.
Articles: Aluminum and aluminum alloy cans
Merchandise: Aluminum and aluminum alloy sheet
Factory: Guayama, PR
Statement signed: July 27, 1983
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: New York, February 22, 1984

(O) Company: Lundy Electronics & Systems Inc.
Articles: Metallized Glass Fiber
Merchandise: Glass Marble
Factory: Pompano Beach, FL
Statement signed: January 4, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, February 2, 1984

(P) Company: Mobay Chemical Corporation
Articles: Nudrin (R), 90 Soluble Powder Insecticide
Merchandise: Technical Nudrin (R) Insecticide
Factory: Kansas City, MO
Statement signed: January 6, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Houston, February 15, 1984

(Q) Company: Rohm and Haas Tennessee Inc.
Articles: Stam series
Merchandise: 3,4 dichloroaniline
Factory: Knoxville, TN
Statement signed: October 3, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), January 25, 1984

(R) Company: Rohm and Haas Tennessee Inc.
Articles: Stam series
Merchandise: Propionic anhydride
Factory: Knoxville, TN
Statement signed: October 3, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), February 2, 1984

(S) Company: Sabers Refining Company
Articles: Custom Blended Residual Fuel Oil
Merchandise: Residual Fuel Oil; Crude Oil
Factory: Corpus Christi, TX
Statement signed: November 7, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Houston, February 3, 1984

(T) Company: Simpson Extruded Plastics Company
Articles: PVC Pipe
Merchandise: PVC Resin
Factory: Eugene, OR; Sunnyside, WA; Visalia, CA
Statement signed: October 24, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Los Angeles (San Francisco Liquidation), February 13, 1984

(U) Company: Siouxpreme Egg Products, Inc.
Articles: Liquid whole eggs, whites and yolks; liquid egg yolks with sugar or salt added; dried standard whole eggs, whites and yolks
Merchandise: Chicken eggs
Factory: Sioux Center, IA
Statement signed: December 27, 1983
Basis of claim: Used in, less valuable waste, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to Regional Commissioner of Customs: Chicago, January 24, 1984

(V) Company: Sonstegard Foods, Inc.
Articles: Dried standard whole eggs, yolks and whites
Merchandise: Liquid whole eggs, liquid yolks and liquid whites
Factory: Howard Lake, MN
Statement signed: December 27, 1983
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to Regional Commissioner of Customs: Chicago, January 24, 1984

(W) Company: Swift & Company
Articles: Peanut butter
Merchandise: Peanuts
Factory: Chicago, IL; Dallas, TX
Statement signed: November 17, 1983
Basis of claim: Appearing in
Rate forwarded to Regional Commissioners of Customs: Chicago and Los Angeles (San Francisco Liquidation), January 24, 1984

(X) Company: Syntex Chemicals, Inc.
Articles: 2-D-(6'methoxy-2'-naphthyl)-propionic acid salt of 1-deoxy-1-(octyl amino)-D-glucitol (NDC1)
Merchandise: N-n-Octylglucamine (NOG 1) 1-Deoxy-1(*n*-octylamino)-D-glucitol
Factory: Boulder, CO
Statement signed: November 22, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Miami, February 8, 1984

(Y) Company: Union Carbide Corporation
Articles: Ethylene Glycol, Fiber Grade and Diethylene Glycol
Merchandise: Ethylene Glycol
Factories: Port Lavaca, TX; Hahnville, LA; Alsip, IL
Statement signed: November 10, 1983
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to Regional Commissioner of Customs: New York, January 25, 1984

(Z) Company: The Upjohn Co., Fine Chemical Div.
Articles: 2,2 Diethoxyacetophenone (DEAP)
Merchandise: Acetophenone
Factory: North Haven, CT
Statement signed: September 20, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, February 7, 1984

Allsun Juices, Inc., operating under T.D. 78-397-A, has changed its name to Allsun Products.

(T.D. 84-155)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued April 11, 1984, to June 21, 1984, inclusive, pursuant to Subpart C of Part 191, Customs Regulations; and an approval under T.D. 84-49.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was forwarded or issued.

(DRA-1-09)

File: 217117.
Dated: July 16, 1984.

GEORGE C. STEUART
(For Edward B. Gable, Jr., Director,
Carriers, Drawback and Bonds Division).

(A) Company: Anheuser-Busch, Inc.
Articles: Beer
Merchandise: Hops (humulus lupulus)
Factories: St. Louis, MO; Newark, NJ; Van Nuys, and Fairfield, CA; Tampa, and Jacksonville, FL; Houston, TX; Columbus, OH; Merrimack, NH; Williamsburg, VA; Baldwinsville, NY
Statement signed: July 25, 1983
Basis of claim: Used in
Rate forwarded to Regional Commissioners of Customs: Chicago and Los Angeles (San Francisco Liquidation), May 1, 1984

(B) Company: Armstrong World Industries, Inc.
Articles: Resilient Vinyl Sheet Flooring and Tile
Merchandise: Titanium Dioxide White Pigment
Factory: Lancaster, PA
Statement signed: February 13, 1984
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), June 5, 1984

(C) Company: Beadex Manufacturing Company, Inc.
Articles: Steel Channel used in drywall construction
Merchandise: Galvanized steel sheet in coils
Factory: Renton, WA
Statement signed: November 1, 1983
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: Los Angeles (San Francisco Liquidation), June 18, 1984

(D) Company: Bunnell Plastics, Inc.
Articles: Rod, tube, sheets, tape, shapes, pipe liners, and molded products
Merchandise: Fluorinated Ethylene Polymers (FEP)
Factory: Mickleton, NJ
Statement signed: February 1, 1984
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: New York, April 23, 1984

(E) Company: Bunnell Plastics, Inc.
Articles: Rod, tube, sheets, tape, shapes, pipe liners, and molded products

Merchandise: Teflon PFA
Factory: Mickleton, NJ
Statement signed: February 1, 1984
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: New York, April 18, 1984

(F) Company: Cyclops Corporation—Empire-Detroit Steel Division
Articles: Carbon and Stainless Steel in Coil, Sheet, Strip Coil, and Blanks
Merchandise: Ferrochrome; Ferromanganese; Ferrotitanium
Factory: Mansfield and Dover, OH
Statement signed: April 9, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, May 23, 1984

(G) Company: Delta Tanning Corporation
Articles: Finished cowhide leather in sides
Merchandise: Tanned unfinished bovine side leather
Factory: Factories of agents operating under T.D. 55207(1)
Statement signed: April 16, 1984
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: New York, June 4, 1984

(H) Company: Dixon Industries Corporation
Articles: Billets, cassettes, sheets, tape, film and similar products
Merchandise: Ultra-high-molecular-weight polyethylene resin
Factory: Bristol, RI
Statement signed: January 5, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, May 18, 1984

(I) Company: Eli Lilly and Company
Articles: Tylan, Tylocine, and Tylosin products
Merchandise: Sulfamethazine granulated and feed grades; Betaine Anhydrous, Tylosin Phosphate and granulated concentrates
Factory: Clinton, Lafayette, and Indianapolis, IN; Omaha, NE
Statement signed: January 12, 1984
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: Chicago, May 1, 1984
Revokes: T.D. 82-11-Q

(J) Company: Hoffmann-La Roche Inc.
Articles: Sulfamethoxazole
Merchandise: p-Acetylsulfanilyl Chloride (ASC)

Factories: Nutley and Belvidere, NJ
Statement signed: April 5, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, June 4, 1984

(K) Company: Hopkins Agricultural Chemical Co.
Articles: Sodium TCA Weed Killer
Merchandise: Sodium trichloroacetate technical granules
Factories: Atlanta, IL, Randolph, WI
Statement signed: April 4, 1983
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: Chicago, May 7, 1984

(L) Company: Kimes Corporation
Articles: Corrosion Inhibitors
Merchandise: Alkyl-Benzene-Sulfonic Acids 117, 157, 119
Factory: Flint, MI
Statement signed: April 4, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, May 11, 1984

(M) Company: Kulite Tungsten Corporation
Articles: Tungsten alloy powder and tungsten alloy parts; tungsten parts and fabrication
Merchandise: Tungsten powder and tungsten carbide powder
Factory: East Rutherford, NJ
Statement signed: March 21, 1984
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs in accordance with section 191.25(b)(2), Customs Regulations: New York, May 17, 1984
Revokes: T.D. 80–62–K

(N) Company: Merck & Co., Inc.
Articles: Diflunisal —2′,4′-Difluoro-4-Hydroxy-3-Biphenyl Carboxylic Acid
Merchandise: Diflunisal Compound V–A-4-(2′,4′-Difluorophenyl) Sodium Phenolate
Factories: Elkton, VA; Rahway, NJ
Statement signed: April 12, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: New York, May 14, 1984

(O) Company: Mir-Acryl Corporation
Articles: Mirrorized acrylic sheets
Merchandise: Acrylic plastic sheets
Factory: Belleville, MI

Statement signed: October 17, 1983
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: New York, April 18, 1984

(P) Company: Monsanto Company
Articles: Lustran®ABS 240 Natural
Merchandise: Lustran CN87 Polymer
Factories: Addyston, OH; Muscatine, IA
Statement signed: November 15, 1983
Basis of claim: Appearing in
Rate forwarded to Regional Commissioners of Customs: Chicago and New York, June 21, 1984

(Q) Company: Morflex Chemical Co., Inc.
Articles: N, N-Diethyl-M-Toluamide (DEET)
Merchandise: Meta Toluic Acid
Factory: Greensboro, NC
Statement signed: March 3, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Miami, June 21, 1984

(R) Company: Murco, Inc.
Articles: Beef cuts; Edible beef offal; Various beef byproducts resulting from the slaughter of live cattle
Merchandise: Live dairy cattle; Live beef breed cattle
Factory: Plainwell, MI
Statement signed: April 5, 1984
Basis of claim: Used in, less valuable waste, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to Regional Commissioner of Customs: Chicago, May 18, 1984

(S) Company: Plaskon Electronic Materials, Inc.
Articles: Synthetic resin epoxy molding compound
Merchandise: Epoxy resin
Factory: Toledo, OH
Statement signed: March 21, 1984
Basis of claim: Apearing in
Rate forwarded to Regional Commissioner of Customs: New York, June 4, 1984

(T) Company: Storage Technology De Puerto Rico, Inc.
Articles: Computer Solid State Disk Systems (SSD) and Spare Parts
Merchandise: Integrated circuits
Factory: Ponce, PR
Statement signed: February 15, 1984
Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Miami, June 4, 1984

(U) Company: Syntex Chemicals, Inc.
Articles: 2-D, L-(6′methoxy-2′naphthyl) propionic acid, abbreviated as (D, L-acid); 2-D-(6′-methoxy-2′naphthyl) propionic acid salt of 1-deoxy-1-(octylamino)-D-glucitol, abbreviated as (NOG-1)
Merchandise: Bromopropionic acid (BPA)
Factory: Boulder, CO
Statement signed: February 14, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioners of Customs: Miami and Los Angeles, June 21, 1984

(V) Company: Tops Mfg. Co., Inc.
Articles: Finished glass carafes
Merchandise: Glass carafes
Factory: Rockaway, NJ
Statement signed: May 1, 1984
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: Boston, May 7, 1984

(W) Company: TreeSweet Products Co.
Articles: Green Spot Bottlers Drink Base Concentrate
Merchandise: Concentrated orange juice for manufacturing
Factories: Ft. Pierce, FL; Santa Ana, and Coachella, CA; Glendale, AZ
Statement signed: May 10, 1984
Basis of claim: Used in
Rate forwarded to Regional Commissioner of Customs: Miami, June 4, 1984

(X) Company: Ultra-Poly, Inc.
Articles: Polyethylene sheets, rods, and various forms
Merchandise: Ultra-high molecular-weight polyethylene resins
Factory: Tacoma, WA
Statement signed: January 9, 1984
Basis of claim: Appearing in
Rate forwarded to Regional Commissioner of Customs: Los Angeles (San Francisco Liquidation), June 4, 1984

(Y) Company: Uniroyal, Inc.
Articles: Alanap, Dyanap, and Rescue (Herbicides)
Merchandise: Alpha Naphthylamine
Factory: Gastonia, NC
Statement signed: March 20, 1984
Basis of claim: Appearing in

448-314 O - 84 - 3

Rate forwarded to Regional Commissioner of Customs: New York, May 7, 1984

(Z) Company: Witco Chemical Corporation
Articles: White oils; petroleum sulfonates
Merchandise: Lubricating oil
Factories: Petrolia, PA; Harvey, LA
Statement signed: March 23, 1984
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to Regional Commissioner of Customs: New York, May 2, 1984
Revokes: Approval letter 215435 dated January 19, 1983

Approval under T.D. 84-49

(1) Company: Dow Corning Corporation
Articles: Dimethylhydrolyzate; Dimethyl Linears; Dimethyl Cyclics; Methyltrichlorosilane; Dimethyldichlorosilane; Trimethylchlorosilane
Merchandise: Silicon Metal
Factories: Midland, MI; Carrollton, KY
Statement signed: April 3, 1984
Basis of claim: As provided in the drawback rate contained in T.D. 84-49, in the same manner as petroleum
Rate forwarded to Regional Commissioner of Customs: Chicago, June 4, 1984

(T.D. 84-156)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued September 23, 1983, to May 1, 1984, inclusive, pursuant to either sections 22.1 through 22.5, inclusive, Customs Regulations, or to Subparts A and B, Part 191, Customs Regulations (the revised drawback regulations, T.D. 83-212).

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was signed.

(DRA-1-09)

File: 217080.

Dated: July 13, 1984.

EDWARD B. GABLE, JR.,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: A & G Engineering Co. II Inc.
Articles: Fasteners
Merchandise: Imported unfinished fasteners and steel bars
Factory: Anaheim, CA
Statement signed: November 17, 1983
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Los Angeles, May 1, 1984

(B) Company: Aldrich-Boranes, Inc.
Articles: Various chemical compounds
Merchandise: Various imported chemicals
Factory: Sheboygan Falls, WI
Statement signed: December 12, 1983
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Chicago, February 16, 1984

(C) Company: Aldrich Chemical Company
Articles: Various chemical compounds
Merchandise: Various imported chemicals
Factories: Milwaukee, WI (2)
Statement signed: December 12, 1983
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Chicago, February 16, 1984

(D) Company: American Thread Company
Articles: Various sizes of "spunpoly" yarn, such as, but not limited to, 30/2, 42/1 and 20/3
Merchandise: Imported 1.2 denier 1.5 inch cut (38 mm) polyester staple
Factory: Marble, NC
Statement signed: September 21, 1983
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Miami, October 13, 1983
Revokes: T.D. 83-256-A

(E) Company: Baker Lift Systems
Articles: Motors
Merchandise: Imported thrust bearings and pads

Factory: Oklahoma City, OK
Statement signed: February 7, 1984
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Houston, March 27, 1984

(F) Company: Coastal Power Products, Inc.
Articles: Detroit-Diesel generator sets
Merchandise: Imported Newage-Stamford electric generators
Factory: Lake Monroe, FL
Statement signed: January 24, 1984
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Miami, February 14, 1984

(G) Company: Complete Machinery & Equipment Co., d/b/a Complete Wellpoint & Equipment Service
Articles: Complete wellpoint pumps
Merchandise: Imported diesel engines and vacuum pumps
Factory: Port Orange, FL
Statement signed: March 7, 1983
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Miami, November 21, 1983

(H) Company: Davidson Plywood and Lumber Company
Articles: Vinyl laminated hardwood plywood panels
Merchandise: Imported raw plywood panels
Factory: Tualatin, OR
Statement signed: November 11, 1983
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Los Angeles (San Francisco Liquidation), December 19, 1983

(I) Company: DMT Corporation
Articles: Generator sets and engine and electric motor driven pump packages
Merchandise: Imported gasoline and diesel engines and parts thereof, electric generators, and motors, pumps, radiators, batteries, battery chargers and circuit breakers
Factories: Washington, IL; Waukesha, WI
Statement signed: December 9, 1983
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Chicago, December 15, 1983
Revokes: T.D. 80-204-G

(J) Company: Drexel Chemical Co.
Articles: Atrazine 50 percent agricultural herbicide

Merchandise: Imported atrazine technical grade
Factory: Tunica, MS
Statement signed: December 30, 1983
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: New Orleans, January 18, 1984

(K) Company: J. Hewitt Incorporated
Articles: Sterilized ear piercing studs
Merchandise: Imported stainless steel studs
Factory: Irvine, CA
Statement signed: March 1, 1984
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Los Angeles, April 3, 1984

(L) Company: Lehman Power Corporation
Articles: Complete diesel marine engines with or without transmissions
Merchandise: Imported basic diesel marine engines and transmissions
Factory: Linden, NJ
Statement signed: March 5, 1984
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: New York, March 21, 1984
Revokes: T.D.s 56384–G, 71–74–E, and 78–268–H

(M) Company: Magnavox Government & Industrial Electronics Co.
Articles: Above-deck unit (antenna) for MX211A satellite communication system
Merchandise: Imported antenna assembly units
Factory: Torrance, CA
Statement signed: October 3, 1983
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Los Angeles, October 7, 1983

(N) Company: Mitel Incorporated
Articles: Mitel Regent Model SX–200 private automated branch exchange
Merchandise: Imported printed circuit board
Factory: Boca Raton, FL
Statement signed: December 20, 1983
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Miami, February 24, 1984

(O) Company: Nucor Corporation, Research Chemicals Division
Articles: Samarium metal and alloys
Merchandise: Imported samarium oxide, mischmetal, and cobalt
Factory: Phoenix, AZ
Statement signed: March 16, 1984
Basis of claim: Appearing in, used in
Rate issued by Regional Commissioner of Customs: Houston, March 29, 1984

(P) Company: NYCO International, Inc.
Articles: Marine lubricating oils
Merchandise: Imported marine lubricating concentrates
Factory: Houston, TX
Statement signed: February 1, 1984
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Houston, March 1, 1984

(Q) Company: Pacific Western Industries, Inc.
Articles: Steel roofing, siding, flashings, and trim
Merchandise: Imported galvanized steel and prepainted galvanized steel
Factory: Spokane, WA
Statement signed: January 20, 1984
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Los Angeles (San Francisco Liquidation), February 14, 1984

(R) Company: Pacific Wood Products Company
Articles: Paper-laminated panels
Merchandise: Imported plywood panels
Factory: Pennsauken, NJ
Statement signed: October 27, 1983
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Los Angeles, November 15, 1983

(S) Company: Petromax Products, Ltd.
Articles: Gasoline
Merchandise: Imported pentane
Factory: Channelview, TX
Statement signed: March 7, 1984
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Houston, March 27, 1984

(T) Company: Reco Industries, Inc.
Articles: Steel plate, cut and/or shaped for fabrication
Merchandise: Imported carbon steel plate
Factory: Natchez, MS

Statement signed: September 6, 1983
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: New Orleans, October 5, 1983

(U) Company: Rogers Corporation
Articles: Silver and nickel plated ceramic chips
Merchandise: Imported unmetallized, silver plated or nickel plated ceramic plates
Factories: Chandler, Mesa and Tempe, AZ
Statement signed: February 2, 1984
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: Houston, February 1984

(V) Company: Seco Dairies of Florida, Inc.
Articles: Liquid and powdered drink bases and flavored purees
Merchandise: Imported citric acid-medium nor-granular
Factory: Deland, FL
Statement signed: February 27, 1984
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Miami, March 8, 1984

(W) Company: Sigma Chemical Company
Articles: Various chemical compounds
Merchandise: Various imported chemicals
Factory: St. Louis, MO (3)
Statement signed: August 24, 1983
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Chicago, October 27, 1983

(X) Company: Tug Manufacturing Corporation
Articles: Baggage tow tractors, four wheel drive tow tractors, and mobile belt conveyors
Merchandise: Imported Perkins diesel engines
Factory: Marietta, GA
Statement signed: August 26, 1983
Basis of claim: Used in
Rate issued by Regional Commissioner of Customs: Miami, September 23, 1983

(Y) Company: Weber Metals, Inc.
Articles: Aluminum forgings
Merchandise: Imported aluminum preforms
Factory: Paramount, CA
Statement signed: February 27, 1984
Basis of claim: Used in, less valuable waste

Rate issued by Regional Commissioner of Customs: Los Angeles, March 22, 1984

(Z) Company: Wesley Industries, Inc.
Articles: Triple Tin™ 4L Fungicide
Merchandise: Imported triphenytmltin hydroxide technical
Factory: Montrose, AL
Statement signed: December 19, 1983
Basis of claim: Appearing in
Rate issued by Regional Commissioner of Customs: New Orleans, March 15, 1984

(T.D. 84-157)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
June 1, 1984	N/A
Chile peso:	
June 1, 1984	N/A
Colombia peso:	
June 1, 1984	N/A
Greece drachma:	
June 1, 1984	$0.009304
Indonesia rupiah:	
June 1, 1984	N/A
Israel shekel:	
June 1, 1984	.004930
Peru sol:	
June 1, 1984	N/A
South Korea won:	
June 1, 1984	.001249
Taiwan dollar:	
June 1, 1984	.025025

(LIQ-03-01 S:COM CIE)
Dated: June 1, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-158)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 USC 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
June 4–8, 1984	N/A
Chile peso:	
June 4–8, 1984	N/A
Colombia peso:	
June 4–8, 1984	N/A
Greece drachma:	
June 4, 1984	$0.009372
June 5, 1984	.009363
June 6, 1984	.009339
June 7, 1984	.009328
June 8, 1984	.009311
Indonesia rupiah:	
June 4–8, 1984	N/A
Israel shekel:	
June 4, 1984	.004930
June 5–7, 1984	.004906
June 8, 1984	.004795
Peru sol:	
June 4–8, 1984	N/A
South Korea won:	
June 4, 1984	.001251
June 5–6, 1984	.001252
June 7, 1984	.001251
June 8, 1984	.001250
Taiwan dollar:	
June 4–6, 1984	.025019
June 7, 1984	.025031

448-314 O - 84 - 4

June 8, 1984	.025056

(LIQ-03-01 S:COM CIE)
Dated: June 8, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-159)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
June 11-18, 1984	N/A
Chile peso:	
June 11-18, 1984	N/A
Colombia peso:	
June 11-18, 1984	N/A
Greece drachma:	
June 11, 1984	$0.009320
June 12, 1984	.009242
June 13, 1984	.009234
June 14, 1984	.009238
June 15, 1984	.009170
Indonesia rupiah:	
June 11-15, 1984	N/A
Israel shekel:	
June 11, 1984	.004727
June 12, 1984	.004708
June 13, 1984	.004685
June 14-15, 1984	.004680
Peru sol:	
June 11-15, 1984	N/A
South Korea won:	
June 11-12, 1984	.001249
June 13-15, 1984	.001248

Taiwan dollar:	
June 11, 1984	.025088
June 12, 1984	.025107
June 13, 1984	.025132
June 14, 1984	N/A
June 15, 1984	.025151

(LIQ-03-01 S:COM CIE)
Dated: June 15, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-160)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
June 18-22, 1984	N/A
Chile peso:	
June 18-22, 1984	N/A
Colombia peso:	
June 18-22, 1984	N/A
Greece drachma:	
June 18, 1984	$0.009141
June 19, 1984	.009107
June 20, 1984	.009103
June 21, 1984	.009058
June 22, 1984	.009070
Indonesia rupiah:	
June 18-22, 1984	N/A
Israel shekel:	
June 18-21, 1984	.004680
June 22, 1984	.004476
Peru sol:	
June 18-22, 1984	N/A

South Korea won:	
June 18, 1984	.001247
June 19–20, 1984	.001246
June 21, 1984	.001244
June 22, 1984	.001243
Taiwan dollar:	
June 18, 1984	.025119
June 19–20, 1984	.025094
June 21, 1984	.025100
June 22, 1984	.025107

(LIQ–03–01 S:COM CIE)

Dated: June 22, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84–161)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
June 25–29, 1984	N/A
Chile peso:	
June 25–29, 1984	N/A
Colombia peso:	
June 25–29, 1984	N/A
Greece drachma:	
June 25, 1984	$0.009021
June 26, 1984	.009070
June 27, 1984	.009058
June 28, 1984	.009046
June 29, 1984	.009070
Indonesia rupiah:	
June 25–29, 1984	N/A

Israel shekel:	
June 25–26, 1984	.004244
June 27, 1984	N/A
June 28–29, 1984	.004243
Peru sol:	
June 25–29, 1984	N/A
South Korea won:	
June 25, 1984	.001242
June 26, 1984	.001240
June 27, 1984	.001242
June 29, 1984	.001240
Taiwan dollar:	
June 25, 1984	.025126
June 26, 1984	.025138
June 27, 1984	.025151
June 28, 1984	.025164
June 29, 1984	.025183

(LIQ–03–01 S:COM CIE)

Dated: June 29, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84–162)

Quarterly Rates of Exchange

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for the information and use of Customs officers and others concerned pursuant of Part 159, Subpart, C, Customs Regulations (19 CFR 159, Subpart C).

Quarter beginning: July 1, 1984 through September 30, 1984,

Country	Name of Currency	U.S. dollars
Australia	Dollar	.85830
Austria	Schilling	.051059
Belgium	Franc	.017606
Brazil	Cruziero	.000579

Country	Name of Currency	U.S. dollars
Canada	Dollar	.759590
China, P.R	Renminbi Yuan	.443872
Denmark	Krone	.097632
Finland	Markka	.168890
France	Franc	.116741
Germany	Deutsche Mark	.358230
Hong Kong	Dollar	.127877
India	Rupee	.089127
Iran	Rial	N/A
Ireland	Pound	1.0960
Italy	Lira	.000582
Japan	Yen	.004193
Malaysia	Dollar	.430478
Mexico	Peso	.004975
Netherlands	Guilder	.317712
New Zealand	Dollar	.63220
Norway	Krone	.124688
Philippiness	Peso	N/A
Portugal	Escudo	.006803
Republic of So. Africa	Rand	.73100
Singapore	Dollar	.468055
Spain	Peseta	.006298
Sri-Lanka	Rupee	.039714
Sweden	Krona	.122026
Switzerland	Franc	.426894
Thailand	Baht (Tical)	.043440
United Kingdom	Pound	1.3508
Venezuela	Bolivar	.071685

(LIQ-03-01 S:COM CIE)
Dated: July 2, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-163)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-97 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs

purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
June 1, 1984	$0.000632
China P.R. yuan:	
June 1, 1984	.450999
Mexico peso:	
June 1, 1984	.005025
Portugal escudo:	
June 1, 1984	.007158
Venezuela bolivar:	
June 1, 1984	.065147

(LIQ-03-01 S:COM CIE)

Dated: June 1, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-164)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-97 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
June 4-8, 1984	$0.000623
China P.R. yuan:	
June 4-8, 1984	.455996
Mexico peso:	
June 4, 1984	.004975
June 5, 1984	.004950
June 6, 1984	.004969
June 7, 1984	.004950
June 8, 1984	.004938

Philippines peso:	
June 6–8, 1984	N/A
Portugal escudo:	
June 8, 1984	.007174
Venezuela bolivar:	
June 4, 1984	.066890
June 5, 1984	.067568
June 6, 1984	.067476
June 7, 1984	.065574
June 8, 1984	.067797

(LIQ–03–01 S:COM CIE)

Dated: June 8, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84–165)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84–97 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
June 15, 1984	$0.88550
Brazil cruzeiro:	
June 11–14, 1984	.000615
June 15, 1984	.000606
China P.R. yuan:	
June 11, 1984	.455996
June 12–14, 1984	.454174
June 15, 1984	.452817
Germany mark:	
June 15, 1984	.364830
Ireland pound:	
June 15, 1984	1.1158

Italy lira:	
June 15, 1984	.000588
Mexico peso:	
June 11, 1984	.005063
June 12, 1984	.005051
June 13, 1984	.005168
June 14, 1984	.005181
June 15, 1984	.005188
Philippines peso:	
June 11–15, 1984	N/A
Portugal escudo:	
June 11, 1984	.007168
June 12–14, 1984	.007117
June 15, 1984	.007077
Switzerland franc:	
June 11, 1984	.441112
June 12, 1984	.438847
June 13, 1984	.440335
June 14, 1984	.440141
June 15, 1984	.438500
Venezuela bolivar:	
June 11, 1984	.066890
June 12, 1984	.067024
June 13–14, 1984	.067114
June 15, 1984	.067340

(LIQ–03–01 S:COM CIE)

Dated: June 15, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84–166)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84–97 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs

448–314 O – 84 – 5

purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
June 18, 1984	$0.88200
June 19, 1984	.88330
June 20, 1984	.87550
June 21–22, 1984	.86850
Austria schilling:	
June 18, 1984	.051653
June 19, 1984	.051693
June 20, 1984	.051616
June 21, 1984	.051138
June 22, 1984	.051243
Belgium franc:	
June 18, 1984	.017803
June 19, 1984	.017809
June 20, 1984	.017680
June 21, 1984	.017652
June 22, 1984	.017662
Brazil cruzeiro:	
June 18–20, 1984	.000606
June 21–22, 1984	.000598
China, P.R. yuan:	
June 18, 1984	.450572
June 19, 1984	.452817
June 20–21, 1984	.448310
June 22, 1984	.446090
Denmark krone:	
June 18, 1984	.099015
June 19, 1984	.099049
June 20, 1984	.098261
June 21, 1984	.098198
June 22, 1984	.098111
Finland markka:	
June 20, 1984	.170126
June 21, 1984	.169996
June 22, 1984	.169924
France franc:	
June 18, 1984	.118099
June 19, 1984	.118064
June 20, 1984	.117302
June 21, 1984	.117165
June 22, 1984	.117151

Germany mark:	
June 18, 1984	.362845
June 19, 1984	.362516
June 20, 1984	.359842
June 21, 1984	.359324
June 22, 1984	.359389
Ireland pound:	
June 18, 1984	1.1092
June 19, 1984	1.1093
June 20, 1984	1.1009
June 21–22, 1984	1.1005
Italy lira:	
June 18, 1984	.000587
June 19, 1984	.000588
June 20, 1984	.000584
June 21–22, 1984	.000583
Mexico peso:	
June 18, 1984	.005215
June 19, 1984	.005222
June 20, 1984	.005202
June 21, 1984	.005222
June 22, 1984	.005208
Netherlands guilder:	
June 18, 1984	.322061
June 19, 1984	.322009
June 20, 1984	.319438
June 21, 1984	.319234
June 22, 1984	.319081
Philippines peso:	
June 18–22, 1984	N/A
Portugal escudo:	
June 18, 1984	.007055
June 19, 1984	.007025
June 20, 1984	.007030
June 21, 1984	.006949
June 22, 1984	.006944
Republic of South Africa rand:	
June 18, 1984	.76300
June 20, 1984	.76250
June 21–22, 1984	.75700
Spain peseta:	
June 22, 1984	.006361
Sweden krona:	
June 20, 1984	.122369

June 21, 1984	.122324
June 22, 1984	.122436
Switzerland franc:	
June 18, 1984	.436110
June 19, 1984	.437063
June 20, 1984	.433651
June 21, 1984	.432339
June 22, 1984	.432246
Venezuela bolivar:	
June 18, 1984	.067340

(LIQ-03-01 S:COM CIE)

Dated: June 22, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-167)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-97 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
June 25, 1984	$0.85500
June 26, 1984	.86100
June 27, 1984	.88605
June 28, 1984	.86680
June 29, 1984	.86150
Austria schilling:	
June 25, 1984	.050800
June 26, 1984	.051171
June 27, 1984	.051059
June 28, 1984	.051177
June 29, 1984	.051223
Belgium franc:	
June 25, 1984	.017528

June 26, 1984	.017637
June 27, 1984	.017565
June 28, 1984	.017630
June 29, 1984	.017662
Brazil cruzeiro:	
June 25–26, 1984	.000598
June 27–28, 1984	.000589
June 29, 1984	.000579
China P.R. yuan:	
June 25, 1984	.446090
June 26, 1984	.449380
June 27–29, 1984	.443872
Denmark krone:	
June 25, 1984	.097456
June 26, 1984	.098006
June 27–28, 1984	.097599
June 29, 1984	.098015
Finland markka:	
June 25, 1984	.168905
June 26, 1984	.169866
June 27, 1984	.169119
June 28, 1984	.169434
June 29, 1984	.169750
France franc:	
June 25, 1984	.116225
June 26, 1984	.116986
June 27, 1984	.116482
June 28, 1984	.117041
June 29, 1984	.117151
Germany mark:	
June 25, 1984	.356697
June 26, 1984	.358873
June 27, 1984	.357590
June 28, 1984	.359260
June 29, 1984	.359518
Ireland pound:	
June 25, 1984	1.0922
June 26, 1984	1.0990
June 27, 1984	1.0940
June 28, 1984	1.0980
June 29, 1984	1.0985
Italy lira:	
June 25, 1984	.000580
June 26, 1984	.000583

June 27, 1984	.000581
June 28–29, 1984	.000583
Japan yen:	
June 25, 1984	.004203
June 26, 1984	.004218
June 27, 1984	.004202
June 28–29, 1984	.004214
Mexico peso:	
June 25, 1984	.005188
June 26, 1984	.005155
June 27, 1984	.005102
June 28, 1984	.005000
June 29, 1984	.004926
Netherlands guilder:	
June 25, 1984	.316756
June 26, 1984	.318573
June 27, 1984	.317158
June 28, 1984	.319030
June 29, 1984	.318928
Norway krone:	
June 25, 1984	.126135
June 26, 1984	.125502
June 27, 1984	.125031
June 28, 1984	.125094
June 29, 1984	.125219
Philippines peso:	
June 25–29, 1984	N/A
Portugal escudo:	
June 25–26, 1984	.006920
June 27, 1984	.006911
June 28, 1984	.006854
June 29, 1984	.006814
Republic of South Africa rand:	
June 25, 1984	.74250
June 26, 1984	.74150
June 27, 1984	.73365
June 28, 1984	.73550
June 29, 1984	.73600
Spain peseta:	
June 25, 1984	.006325
June 26, 1984	.006346
June 27, 1984	.006345
June 28, 1984	.006308
June 29, 1984	.006338

Sweden krona:	
June 25, 1984	.122041
June 26, 1984	.122279
June 27, 1984	.121832
June 28, 1984	.122137
June 29, 1984	.122257
Switzerland franc:	
June 25, 1984	.428082
June 26, 1984	.430663
June 27, 1984	.428816
June 28, 1984	.429738
June 29, 1984	.429000
United Kingdom pound:	
June 25, 1984	1.3510
June 26, 1984	1.3532
June 27, 1984	1.3490
June 28, 1984	1.3525
June 29, 1984	1.3575

(LIQ-03-01 S:COM CIE)

Dated: June 29, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

ERRATUM

In CUSTOMS BULLETIN, ,Volume 18, No. 1, dated January 4, 1984, page 16, T.D. 84-6, the rate for the Taiwan dollar was incorrect. The correct rate is listed below.

T.D. 84-6, Taiwan dollar, 11/25/83, .024814.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
James L. Watson
Gregory W. Carman
Jane A. Restani

Senior Judges

Nils A. Boe

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 84–85)

THE WEST BEND CO., DIV. OF DART INDUSTRIES, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 80–10–01774

Before WATSON, *Judge.*

ORDER

Barnes, Richardson & Colburn (*Andrew P. Vance* and *Michael A. Johnson* of counsel) for plaintiff.

Richard K. Willard, Acting Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office (*Barbara M. Epstein,* attorney) for the defendant.

WATSON, *Judge:* In *West Bend Co.* v. *United States,* 6 CIT — (Slip Op. 83–111, Nov. 3, 1983), the Court held that the removal of plaintiff's product from duty-free status under the Generalized System of Preferences (G.S.P.) had been procedurally defective. The specific defect was held to be the failure of the President to determine whether the specific product imported by plaintiff should retain its duty-free status under section 504(d) of the Trade Act of 1974 (19 U.S.C. § 2464(d)) because, on a certain date, competitive products were not produced in the United States.

The Court indicated that it would remand the case for procedurally correct treatment if plaintiff chose not to proceed with certain classification claims, which had a logical priority at that point.

The Court subsequently conferred with the parties to determine the further progress of the action. At those conferences it became clear that the government had a defensive argument which it had not developed earlier; namely, that plaintiff had not exhausted its administrative remedies.

With respect to this action, exhaustion of administrative remedies is a lost defense, not having been timely raised. However, lest the Court's decision leave the impression that there is no genuine issue of whether an administrative procedure exists to remedy situations such as that involved in this action, it states its present understanding of the detailed representations of the government, that

15 C.F.R. § 2007.0(a)(3) [1] provides, and has been used to provide, a remedy which operates in the following manner:

At the time that notice is given in the Federal Register that a product is close to, or has surpassed the limit on duty-free treatment set out in section 504(c)(1)(B) of the Act (19 U.S.C. § 2464(c)(1)(B)), (and therefore faces loss of duty-free treatment) an interested party may file a petition pursuant to 15 C.F.R. § 2007.0(a)(3) requesting a factual determination under section 504(d) of the Trade Act of 1974 (the Act) (19 U.S.C. § 2464(d)) that would exempt the product. A notice will then be published in the Federal Register requesting public comment and announcing a timetable for the making of the determination. If the determination cannot be made by the time when section 504(c) of the Act (19 U.S.C. § 2664(c)) requires the issuance of an Executive Order, the Customs Service will be directed to withhold liquidation of entries of the product involved until the making of the determination under section 504(d).

The procedures outlined give every appearance of providing a full and fair opportunity for parties to obtain the benefit of a section 504(d) exemption. They represent a realistic way for this law to be administered, possibly the only realistic way, given the time constraints and administrative difficulties involved.

It would undoubtedly serve to avoid possible misunderstandings about the availability of these procedures if the regulations were more detailed with respect to their application to the administration of sections 504(c)(1)(B) and 504(d).

In the procedural posture of this case, the Court cannot go so far as to hold that, as a matter of law, the published regulation offered an administrative procedure which has to be exhausted. A claim that the regulation was too vague, or required a degree of prescience beyond that which can reasonably be expected of those in need of such procedures, might still be made.

Nevertheless, the Court can state that the regulation does present a genuine question of exhaustion of administrative remedies which, if timely raised, would have been a serious issue in this case and will have to be faced by other parties if it is raised in other cases.

For the conclusion of this particular action, the Court turns to the details of the procedure on remand.

The Court is generally satisfied with the procedures which the government represents will be followed, if the determination under section 504(d) is accomplished as if a request had been made that product coverage be modified under 15 C.F.R. § 2007.0(a)(3).

However, the notice of review must make it clear that the review is being undertaken pursuant to an order of this Court, relates only to the period of time covered by this action (April, 1980 through March, 1981), and assures a public hearing.

---

[1] The text of 19 C.F.R. § 2007.0(a) reads as follows:

§ 2007.0 Requests for reviews.

An interested party or foreign government may submit a request (1) that additional articles be designated as eligible for the GSP; or (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) that product coverage be otherwise modified.

The results of the review and the President's determination shall be forwarded to the Court and the parties will have 30 days thereafter to make appropriate filings with the Court.

Based on the above, it is

ORDERED that plaintiff's alternative claims for classification are Dismissed, and it is further

ORDERED that the matter is remanded to the Office of the United States Trade Representative for proceedings in accordance with this Order.

Dated: July 13, 1984, New York, New York.

(Slip Op. 84-86)

TERUMO CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81-8-00993

Before WATSON, Judge.

Catheters

A device consisting of a plastic tube attached to a hollow needle is held to be properly classifiable as a catheter under Item 709.09 of the TSUS.

(Decided July 16, 1984)

Glad & White (*Robert Glenn White*, of counsel) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; Joseph I. Liebman, Attorney in Charge, International Trade Field Office, (*Deborah E. Rand*, attorney) for the defendant.

WATSON, *Judge:* The issue in this case is whether merchandise described on the entry papers as "SURFLO I.V. Catheters" was properly classified under Item 709.27, of the Tariff Schedules of the United States (TSUS),[1] as other medical and surgical instruments and apparatus dutiable at the rate of 16.7 percent *ad valorem*. Plaintiff contends that the merchandise should be classified as catheters and parts thereof, under Item 709.09 [2] dutiable at 5.8 percent *ad valorem*.

The Court finds that the classification by the Customs Service was erroneous and that plaintiff's claim is correct.

The imported article consists essentially of a length of plastic tube attached to a hollow needle. It is used in the practice of medi-

[1] The language of the classification reads as follows:

	Medical, dental, surgical and veterinary instruments and apparatus (including electromedical apparatus and ophthalmic instruments), and parts thereof:	
	Other:	
.	. . . . .	. .
709.27	Other	16.7% ad val.

[2] Item 709.09 Bougies, catheters, drains, and sondes, and parts thereof 5.8% ad val.

cine, primarily for introducing fluids through the skin, as in intravenous feeding or the supplying of blood, blood plasma or medications.

In this case it is first necessary to ascertain the meaning of Item 709.09. If that provision accurately describes the importation as a catheter, it is obviously more specific than the government's classification. An *eo nomine* provision must, unless a contrary legislative intent clearly is indicated, be preferred to terms of general description and to enumerations which are broader in scope and less specific. *United States* v. *Astra Trading Corp.,* 44 CCPA 8, C.A.D. 627 (1956).

The defendant argues that the imported device consists of more than a catheter because it contains a needle in addition to a tube. Defendant stresses the importance of the needle in eliminating the necessity for an act of incision. The defendant also argues that the catheter provision was intended only to govern catheters inserted through existing bodily orifices, particularly urological catheters.

In the opinion of the Court, the essential identifying characteristic of a catheter is that it is a tubular instrument inserted into the body and used for the administration or withdrawal of substances. This is the Court's understanding of the weight of the testimony and dictionary definitions. The needle is an aid to this primary function and has no dominant importance.

The fact that at one time catheters may have been simpler devices, entering the body only through existing orifices, or requiring a separate surgical procedure to enter through the skin, is of little moment in the classification of this device.

Item 709.09 of the TSUS is an *eo nomine* provision. An *eo nomine* provision, expressed without limitation or a demonstrated contrary legislative intent, judicial decision, or administrative practice, will include all forms of the article, including improved versions originating since the legislative enactment. Congress legislated for the future and is presumed to have intended to cover all forms of the article as they are developed. *Nomura (America) Corp.* v. *United States,* 62 Cust. Ct. 524, C.D. 3820 (1969), *aff'd.,* 58 CCPA 82, 85, 435 F.2d 1319 (1971).

The imported device is unified physically and functionally. The needle element of the article has no other use than in inserting the device into the body, and it has no independent function. This device is even more unified than the screwdriver with a flashlight feature which was the subject of *Astra Trading Corp.* v. *United States,* 56 Cust. Ct. 555, C.D. 2703 (1966). In that decision the article was held to be not "more than" a screwdriver because the lighting feature did not give it a use other than as a screwdriver.

The decision in *Cragstan Corp.* v. *United States,* 51 CCPA 27 C.A.D. 832 (1963), cited by defendant is distinguishable. That case involved a "Baby in Walker" which incorporated the function of a doll and a mechanism which enabled the doll to walk. The Court

held that the toy consisted of two equally essential components and hence was "more than" a figure of an animate object.

The mechanism which enabled the doll to walk transformed the essential character of the doll and gave the doll a function in addition to its intended use as a doll. However, the needle portion of the catheter does not transform the essential character of the catheter or cause it to acquire a different function or application. In addition, the Court found the testimony of plaintiff's witnesses more persuasive on the question of the identity of this device. It is simply a modern version of a catheter.

The definition of catheters is not limited to urological catheters or to catheters introduced through existing bodily orifices. It is true that when proposed Item 709.09 was first presented to Congress the Tariff Commission represented that the provision referred to urological instruments. The Commission comment stated that 709.09 "covers urological instruments known as bougies, catheters, drains * * * sondes." [3] That limitation however, was clearly not embodied in the plain meaning of the statute.[4] Defendant's witnesses acknowledged that the four named articles were not all urological instruments and were not all introduced through existing orifices.

Legislative history may be used for the purpose of ascertaining Congressional intent where the statute is ambiguous, but it should not be used to introduce ambiguity where the language is clear. *J.M. Altieri* v. *United States,* 62 Cust. Ct. 91, C.D. 3687 (1969).

Defendant claims that the method and terminology used in marketing these devices contradict the claimed classification as catheters. However, the fact that the merchandise is commercially known by a specific name, which name differs from a generic tariff description, is not sufficient to exclude the merchandise from classification under the latter designation. *S.G.B. Steel Scaffolding & Shoring Co. Inc.* v. *United States,* 82 Cust. Ct. 197, 210, C.D. 4802 (1979). A marketing emphasis on the features that make this device an improvement over past catheters is not an indication that something which is not a catheter has been created.

In short, the weight of the evidence and an examination of the device itself in the light of case law persuades the Court that it is a catheter within the meaning of Item 709.09. The superior specificity of that provision is also a demonstration of the incorrectness of the government's classification.

For this reason a judgment will be entered in favor of plaintiff's claim.

Dated: July 16, 1984, New York, New York.

---

[3] U.S. Tariff Commission, Tariff Clarification Study, Explanatory and Background Material 7, at xi (1960).

[4] When the U.S. Tariff Commission reviewed the application of Item 709.09 in 1970, no reference was made to urological instruments. U.S. Tariff Commission Summaries of Trade and Tariff Information Schedule 7, Vol. 2 59–67 (T.C. Pub. No. 322, 1970).

JUDGMENT

TERUMO CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81-8-00993

This case having been duly submitted for decision and the Court, after due deliberation, having rendered a decision herein; now, in conformity with said decision,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED: that these importations are properly classifiable as catheters under Item 709.09 of the TSUS and the entries involved in this action shall be reliquidated accordingly.

Dated: New York, New York, July 16, 1984.

(Slip Op. 84-87)

RHONE POULENC, S.A., and RHONE POULENC, INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT and PQ CORPORATION, DEFENDANT-INTERVENOR

Court No. 81-1-00079

(Decided: July 19, 1984)

Before RESTANI, *Judge.*

Donohue and Donohue (Joseph F. Donohue, James A. Geraghty, and *John M. Peterson, Esqs.),* for plaintiffs.

Richard K. Willard, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch; *Sheila N. Ziff, Esqs.,* United States Department of Justice, for defendant.

Warren Maruyama, Esq., United States International Trade Commission, for defendant.

Mandel and Grunfeld (Bruce M. Mitchell and *Steven R. Sosnov, Esqs.),* for defendant-intervenor.

[Plaintiffs' motion for review of the ITA and ITC final determinations under the antidumping laws regarding anhydrous sodium metasilicate from France denied in part and granted in part.]

OPINION AND ORDER

RESTANI, *Judge:* Plaintiffs, Rhone Poulenc, S.A., and Rhone Poulenc, Inc., ("Rhone Poulenc") [1] challenge the final determination of the United States International Trade Commission ("ITC") or "Commission"), pursuant to 19 U.S.C. § 1673(d)(b)(A)(ii) (1982) that an industry in the United States is threatened with material injury by reason of imports of anhydrous sodium metasilicate (ASM) from France,[2] and the determination of the United States

[1] Unless otherwise noted, both plaintifs will be referred to as Rhone Poulenc.

[2] The disputed final determination of the ITC was published on January 2, 1981 and is found at 46 Fed. Reg. 176. This determination was based upon the record developed in investigation No. 731-TA-25 (Final).

International Trade Administration, Department of Commerce ("ITA") of sales at Less Than Fair Value ("LTFV") pursuant to 19 U.S.C. § 1673d(a) (1982).[3] This matter is before the court pursuant to plaintiffs' motion for review of administrative determinations upon the agency record under Rule 56.1.

Plaintiffs raise the following issues:

(1) Whether the Commission's determination that a United States industry is threatened with material injury is supported by substantial evidence and is otherwise in accordance with law, particularly:

(a) Whether the Commission erred by failing to consider factors applicable to a finding of present material injury, specifically:

(1) Import volume,

(2) Effects of imports upon domestic prices, and

(3) Impact of French ASM imports on the domestic ASM industry;

(b) Whether the Commission improperly aggregated data in assessing injury to an industry;

(c) Whether the Commission's consideration of developments in the Northeast market constituted a proper industry analysis;

(d) Whether the Commission's consideration of developments in the commercial package market is appropriate and in accordance with law;

(e) Whether the concurring opinion of a Commissioner was based upon speculation and conjecture and; [4]

(2) Whether the ITA's disallowance of plaintiffs' claim for an adjustment to foreign market value is supported by substantial evidence and is in accordance with law. More specifically, plaintiffs challenge the disallowance of technical services expenses as a circumstances of sale adjustment to foreign market value and further, any limitation of the exporter's sales price offset adjustment because of a lower level of sales expenses in the United States than in the foreign market.

BACKGROUND

ASM is a sodium silicate manufactured for use as an alkali source [5] in detergent formulations. The largest importer of ASM is Rhone Poulenc, Inc. of Monmouth, New Jersey, which is a wholly owned subsidiary of the French producer and exporter, Rhone Poulenc, S.A., of Paris, France.

There are only four United States manufacturers of ASM. They are PQ Corporation ("PQ") of Valley Forge, Pennsylvania; [6]

---

[3] The disputed final determination of the ITA was published on November 24, 1980 and is found at 45 Fed. Reg. 77498.

[4] We need not reach this issue. A defect in the opinion of one Commissioner will not affect the viability of the majority determination where the proper number of Commissioners have participated. *Cf. Voss International Corp.* v. *United States*, 78 Cust. Ct. 130, 432 F.Supp. 205 (1977), *aff'd in part, and rev'd in part on other grounds*, 67 CCPA 96, 628 F. 2d 1328 (1980).

[5] Alkali is one of the primary cleaning components in a detergent.

[6] PQ is intervenor herein.

Stauffer Chemical Company of Joliet, Illinois, Diamond Shamrock Corporation of Dallas, Texas, and Mayo Products Company, Division of Pennwalt Corporation of Smyrna, Georgia. These companies were found to produce ASM "like" the ASM imported by Rhone Poulenc, Inc.[7] Furthermore, these companies were found to constitute the domestic industry against which the impact of less than fair value (LTFV) sales should be measured.[8]

Each United States ASM producer is vertically integrated. Each produces, in varying degrees, ASM for its own "captive" consumption in the manufacture of detergents. At the same time, each sells ASM in the so-called "commercial" market to other detergent manufacturers who use ASM in the production of independently-labeled detergents.

ASM is sold commercially in two forms. The "bulk" market consists of large volume consumers who take delivery in railway hopper cars or in 2,000 pound sacks. The "package" market consists of smaller quantity consumers.[9] Packaged ASM is shipped in 100-pound sacks or 400-pound drums, and accounts for approximately two-thirds of the commercial market. During the relevant period,[10] ASM imports were sold exclusively in the "package" market.

The ASM industry possesses a few salient features which are notable. First, ASM, a fungible product, is highly price sensitive. Second, the production machinery used to manufacture ASM must be operated continuously, twenty-four hours a day, seven days a week, as profitability falls rapidly when capacity utilization declines. Third, there is decreasing demand for ASM in the United States market, and the foreign producer has capacity for increased production or for diverting production to the United States.

OPINION

Although it is well established that the administrative construction of a statute by the agency charged with its administration is entitled to great weight, *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924 (Fed. Cir. 1984) (citing *Zenith Radio Corp.* v. *United States*, 437 U.S. 443 (1978); *Udall* v. *Tallman*, 380 U.S. 1 (1964); *Selman* v. *United States*, 498 F.2d 1354, 1356 (1974); *Freeport Minerals Company* v. *United States*, 7 Ct. Int'l Trade —, Slip Op. 84-69 at 6-7 (June 14, 1984), the determination at issue must be supported by substantial evidence on the record and may not be contrary to law. *See* 19 U.S.C. § 1516a(b)(1)(B) (1982); *Armstrong Bros. Tool Co.* v. *United States (Daido Corporation, Steelcraft Tools*

[7] Section 771(10), Tariff Act of 1930, as amended, 19 U.S.C. § 1677(10) (1982) provides:

[8] Section 771(4), Tariff Act of 1930, as amended, 19 U.S.C. § 1677(4)(A) (1982) provides:

> The term "like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.
>
> The term "industry" means the domestic producers as a whole of a like product, or those whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

[9] In its preliminary investigation, the Commission referred to package market shipments as "spot" market sales.

[10] The relevant period of importation is 1976 through September of 1980.

Division, Party-in-Interest), 84 Cust. Ct. 16, 483 F.Supp. 312 (1980), *aff'd*, 67 CCPA 94, 626 F.2d 168 (1980), and cases cited therein; *accord Alberta Gas Chemicals, Inc.* v. *United States*, 1 Ct. Int'l Trade 312, 321, 515 F.Supp. 780, 789 (1981); *see also American Spring Wire Corporation* v. *United States*, — Ct. Int'l Trade —, Slip Op. 84-83 at 3 (July 11, 1984) and cases, cited therein; *Southwest Florida Winter Vegetable Growers Association* v. *United States*, 7 Ct. Int'l Trade —, 584 F.Supp. 10 (1984) (citing *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 229 (1938) (Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion")).

Threat of Material Injury

The concept of "threat of material injury" arises in an area of the law which is, needless to say, far from "cut and dry." *See Bethlehem Steel Corp.* v. *United States*, — Ct. Int'l Trade —, Slip Op. 84-67 at 28 (June 8, 1984) ("* * * these are the early days of sophisticated interpretation, despite the long history of such laws * * *.").

The parties disagree over the threat of injury standard. Their disagreement centers around plaintiffs' position that the ITC and the court must look to the economic indicators of injury specified in the present injury standard in order to determine threat of injury. Defendants argue that there is no need to consider the material injury standard, but rather, that the legislative history is determinative in its discussion of demonstrable trends.[11] As discussed below, we find that in making its final determination, the Commission may not consider trends such as market penetration alone, but must consider such trends in conjunction with threat of the specific indicia of present material injury.

The Commission's statutory task is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports being sold or likely to be sold at LTFV. Section 1673d(b)(1)(A)(ii) provides that the "Commis-

[11] The legislative history places importance upon demonstrable adverse trends, in particular market penetration. The House Report states at p. 47:

> In examining threat of material injury, the ITC will determine the likelihood of a particular situation developing into actual material injury. In this regard, demonstrable trends—for example, the rate of increase of the subsidized or dumped exports to the U.S. market, capacity in the exporting country to generate exports, the likelihood that such exports will be directed to the U.S. market taking into account the availability of other export markets, and the nature of the subsidy in question (*i.e.*, is the subsidy the sort that is likely to generate exports to the U.S.)—will be important. However in considering threat, high present capacity utilization of the domestic industry and the absence of other indicia of present injury should not be considered as conclusive as to the absence of threat of injury.
>
> An increase in market penetration may be an early warning signal of injury. Indicia of the threat of material injury will vary from industry to industry. The ITC should place emphasis on the rate of increase of market penetration, particularly if market penetration is achieved by prices which are below U.S. price levels, but which are maintained in the home market.

H. Rep. No. 317, 96th Cong., 1st sess., 47 (1979).

The Senate Finance Committee has similarly stated:

> The ITC will continue to focus on the conditions of trade and competition and the nature of the particular industry in each case. For example, in some cases, *e.g.*, an industry producing a product which has a relatively short market life and significant research and development costs associated with it, a rapid increase in market penetration could quickly result in material injury to that industry. The existence of such increases in market penetration may be a particularly appropriate early warning signal of material injury in such cases.

S. Rep. No. 249, 96th Cong., 1st sess., 89 (1979).

sion shall make a final determination of whether * * * an industry in the United States * * * is threatened with material injury * * * by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination [of sales at LTFV]. * * *" [12]

Threat of material injury is not defined in 19 U.S.C. § 1673d(b)(1)(A)(ii) or in any other section of the Act. The ITC's regulations provide no further definitional assistance. Moreover, what little agency practice in this area exists, offers limited guidance.

In contrast to the dearth of guidelines for the determination of threat of injury, the statute contains detailed specifications for the determination of material injury. In general, " 'material injury' means harm which is non-inconsequential, immaterial, or unimportant." 19 U.S.C. § 1667(7)(A) (1982); 19 CFR § 207.27 (1983). In making an injury determination, the Commission is required to consider, among other factors, the following:

> (i) The volume of imports of the merchandise which is the subject of the investigation;
> (ii) The effect of imports of that merchandise on prices in the United States for like products, and
> (iii) The impact of imports of such merchandise on domestic producers of like products.

19 U.S.C. § 1677(7)(B)(i)–(iii) (1982); *see* 19 C.F.R. § 207.26(a)(1)–(3) (1983).

Although economic factors indicating a threat of material injury vary from case to case, the factors required to be considered in a final determination of present injury must be reviewed in the threat of injury context to determine the imminence of actual injury. *Cf. Republic Steel Corporation* v. *United States,* — Ct. Int'l Trade —, Slip Op. 84-84 at 32 (July 11, 1984) ("The essence of a threat lies in the ability and incentive to act imminently"). Had Congress directly considered this matter,[13] it would have required the Commission when making its final determination to look to these concrete standards in assessing threat of material injury.[14] The general construction of the antidumping laws and the policy of fair treatment to domestic and foreign industries require this result.[15]

---

[12] In order to make a final affirmative determination in its injury investigation, the ITC must find that an industry in the United States: (1) is materially injured or (2) is threatened with material injury or (3) the establishment of an industry is materially retarded, by reason of imports being sold or likely to be sold at LTFV. *See* 19 U.S.C. § 1673d(b)(1) (1982).

[13] "The court's effort must be to discern dispositive legislative intent by 'projecting as well as it could how the legislature would have dealt with the concrete situation if it had but spoken.' "
Asahi Chemical Industry Company, Ltd. v. *United States,* 4 Ct. Int'l. Trade 120, 124, 548 F.Supp. 1261 (1982) (quoting *District of Columbia* v. *Orleans,* 406 F.2d 957, 958 (1968) (quoting *City of Chicago* v. *FPC,* 385 F.2d 629, 635 (D.C. Cir. 1967) (footnote omitted))). *See also* Re, *International Trade Law and the Role of the Lawyer,* 13 Cal. W. Int'l. L. J. 363 (1983).

[14] *Cf. Republic Steel Corporation* v. *United States,* — Ct. Int'l. Trade —, Slip Op. 84-84 at 17-18, 32-33 (July 11, 1984), wherein the court contrasts requirements for a preliminary finding of injury or threat of injury with those applicable to a final determination.

[15] Where it is apparent that Congress did not think about a problem it is incumbent upon the court to consider the policies underlying the statutory provision. *Rose* v. *Lundy,* 455 U.S. 509, 516-518 (1981) (citing *Philbrook*

Continued

There is support for the view expressed here in the legislative history of the Act:

> In determining whether an industry in the United States is threatened with material injury, the ITC will consider the *likelihood of actual material injury occurring.*
>
> S. Rep. No. 249, 96th Cong., 1st Sess. at 88 (1979) [hereinafter "Senate Report"] (emphasis provided).
>
> In examining threat of material injury, the ITC will determine *the likelihood of a particular situation developing into actual material injury.*
>
> H. Rep. No. 317, 96th Cong., 1st Sess. at 47 (1979) [hereinafter "House Report"] (emphasis provided).[16]

This does not conflict with the proposition that in order to finally determine threat of material injury, the Commission will be required to examine factors relating to future conduct. *Cf. Republic Steel Corporation* v. *United States,* — Ct. Int'l Trade —, Slip Op. 84–84 at 32 (July 11, 1984). Furthermore, we see no inconsistency between the requirement that the factors indicating present injury be considered when examining threat and Congress' statement that the absence of any indicia of present injury should not be considered conclusive that threat of injury does not exist.[17] That is, in some cases the intensity of, or threat with regard to one or two factors may so persuade the Commission of threat of injury that the absence of one or another will be no bar to a finding of the requisite threat.[18] In addition, threat with regard to one factor denoting present injury is not necessarily present existence of that factor, as we will discuss *infra.*

We now consider plaintiffs' challenges to the Commission's findings with respect to import volume, the effects of imports upon domestic prices and impact of French ASM imports upon the domestic industry, which are factors to be considered in finding present

---

v. *Glodgett,* 421 U.S. 707, 713 (1975) (In expounding a statute, court must look to the provisions of the whole law, and to its object and policy)); *Unexcelled Chemical Corp.* v. *United States,* 345 U.S. 59, 64 (1953) ("Arguments of policy are relevant when for example a statute has an hiatus that must be filled or there are ambiguities in the legislative language that must be resolved.")

[16] We further note that the review of present injury factors in a threat of injury determination is consistent with the General Agreement on Tariffs and Trade (GATT), which states that "[a] determination of injury [ ] for purposes of Article VI of the General Agreement shall involve an objective examination of both (a) the volume of subsidized imports and their effect on prices in the domestic market for like products [ ] and (b) the consequent impact of these imports on domestic producers of such products." Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, April 12, 1979, 31 U.S.T. 527, 513, T.I.A.S. 9619 — U.N.T.S. — (footnotes omitted). Moreover, "[d]eterminations of injury under the criteria set forth in this Article shall be based on positive evidence. In determining threat of injury the investigating authorities, *in examining the factors listed in this Article,* may take into account the evidence on the nature of the subsidy in question and the trade effects likely to arise therefrom." *Id.* at Art. 6, ¶1, n. 17 (emphasis provided).

[17] *See* footnote 11 (citing House Report at 47).

[18] The presence or absence of any factor which the Commission is required to evaluate under * * * [the above provisions] shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

19 U.S.C. § 1677(7)(E)(ii); *see* 19 C.F.R. § 107.27 (1983); *see American Spring Wire Corporation* v. *United States,* — Ct. Int'l Trade —, Slip Op. 84–83 at 6 (July 11, 1984).

The legislative history is in accord:

> The significance of the various factors affecting an industry will depend upon the facts of each particular case. Neither the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to an injury determination.

Senate Report at 46.

injury. We find that the Commission is required to and did consider [19] whether there is threat of injury with regard to:

> * * * the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

19 U.S.C. § 1677(C)(i) (1982); *see* 19 C.F.R. § 207.26(b)(1) (1983). Plaintiffs allege that the Commission erred in its determinations concerning import volume. Their main argument is that since French ASM imports during the first nine months of 1980 were only 1.9% higher than for the corresponding period of 1979, which was a much less pronounced increase than the dramatic increases in volume in preceding years, that the significance of the upward trend was minimized. The Commission concluded that the ITA's preliminary determination of sales at LTFV,[20] the requirement that bonds be posted on all French ASM imports entering the United States after September 5, 1980, and this pending case, accounted for a reduction in the increase of imports entering the United States.[21] Plaintiffs criticize this as speculative. To bolster their claim of speculation, plaintiffs assert that the only reason import levels for the first nine months of 1980 increased at all was due to a threatened strike. Plaintiffs contend that the Commission should not have disregarded evidence which plaintiffs introduced, consisting of import orders marked "strike inventory."

We note, as did the Commission, that imports did not decrease in 1980 in relation to the corresponding period in 1979. What is clear is that the volume of imports during the relevant periods increased steadily and dramatically until 1980, at which time only the rate of increase declined. There is logic in the Commission's view regarding the effect of the events relating to this case on the rate of increase of imports. This is a corollary to the more obvious principle that "* * * the antidumping order, operating as a strong corrective or deterrent can be presumed to distort the meaningfulness of observable data regarding present conduct in the United States market." *Matsushita Electric Industrial Co.* v. *United States,* 6 Ct. Int'l Trade —, 569 F. Supp. 853, 862 (1983), *motion for rehearing denied,* 6 Ct. Int'l Trade —, 573 F. Supp. 122 (1983).

In regard to the effect on import volume of the threatened dock strike, it is unclear whether any of the orders marked "strike inventory" predated the antidumping petition involved here. In view of the probable effects of that petition, the motivation for marking later import orders "strike inventory" is in doubt, and the Commission could properly minimize the evidentiary weight to be given to such orders. This factor, together with the other data on import volume, leads to the conclusion that the Commission's finding was reasonable.

---

[19] *See* Final Determination at 6.
[20] Commerce calculated a tentative 50 percent margin in its preliminary determination.
[21] *See* Final Determination at 6.

In addition, in assessing threat of increased imports, the commission properly considered Rhone Poulenc's selling practices and production capabilities.[22] The record supports the conclusion that Rhone Poulenc was not producing at capacity. Since maximum capacity utilization is a key to maximum profitability in this industry, there is certainly incentive for Rhone Poulenc to increase its production. In addition, there is no evidence that any long term contracts existed, which would commit sales; in fact, the Commission concluded that there was a likelihood of further expansion into the United States market because of favorable shipping arrangements, a regional warehouse system, and established sales network, unused production capacity and possible diversion of stock from 70 other purchasing countries to the United States. Obvious United States import penetration has occurred and is likely to continue, especially if stock is diverted to this country.

Plaintiffs' argument that this conclusion is speculative is unpersuasive. It is true that threat of material injury may not be based on supposition or conjecture. Senate Report at 88–89; House Report at 47. The threat must be real and imminent. *Id.* But this case contrasts sharply with *Alberta Gas Chemicals, Inc.* v. *United States*, 1 Ct. Int'l Trade 312, 515 F.Supp. 780 (1981) wherein the threat of injury, particularly as it related to increased imports, was based on remote possibilities or contingencies.[23] The factors discussed above indicate that the threat is real here. Therefore, we find that the Commission properly found threat of increases in import volume.

Plaintiffs also claim that the Commission failed to consider the effects of imported ASM upon prices for the like domestic product. We find that the Commission must and did consider the threatened "effect of imports of that merchandise on prices in the United States for like products * * *" 19 U.S.C. § 1677(7)(c)(ii) (1982). In evaluating the effects of imports upon prices, the Commission shall consider threat of:

> (I) * * * significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

---

[22] Plaintiffs claim to have placed an annual upper limit on shipments of ASM to the United States. Plaintiffs also claim to have demonstrated that exports to the United States would not increase through 1985. The majority and Commissioner Stern in her concurrence permissibly discounted this evidence based upon the fact that if Rhone Poulenc exported the full amount of the "self-imposed quota," ASM imports would increase by 20 percent over 1979 levels. Final Determination at 6; *Id.* at 20 (Stern concurrence).

[23] In *Alberta Gas*, the Commission's finding of likelihood of injury was based upon the possibility that the foreign exporter of natural gas, at some future time, would construct new production facilities in Canada and that the United States market would be a logical target for penetration with increased Canadian production. The court concluded that additional exports to the United States were unlikely in the immediate future because:

(1) The exporter was producing at virtually one hundred percent capacity, and

(2) Nearly all production was committed under contractural agreements to existing customers, and

(3) The exporter's markets outside of the United States were expanding, and selling prices in those markets were higher than corresponding United States prices, and

(4) No significant increase in United States import penetration could have occurred even had the entire inventory been suddenly diverted to the United States, and

(5) Even if the exporter had immediately set out to expand its facilities, production in the new facilities could not commence for a year at the earliest, assuming there were no unforeseen delays. The Commission had assumed that there would be no future rise in demand for the product in the U.S. market, where in fact it was clear there would by an increase.

> (II) the effect on imports if such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

19 U.S.C. § 1677(7)(C)(ii)(I)–(II) (1982); 19 C.F.R. § 202.26(b)(2)(i)–(ii) (1983).

Plaintiffs complain that, although Commissioner Stern characterized underselling as significant, the majority opinion lacks such a finding. Although the concise expression of such a finding is preferable, we are reluctant to require the ITC to state its position with technical exactitude in this developing area of the law. The majority found that over the period studied, the price differential between imported and domestic products varied from $4.85 to $1.40 per 100-pound bag, with the French ASM underselling domestic ASM by 6 to 35 percent; and that in all eleven investigation instances of lost sales, totalling $703,320, price was given by purchasers as the principal reason for switching from the domestic to the foreign product. In fact, the record shows that several purchasers stated that it was necessary to purchase imported ASM in order to remain competitive. As noted previously, the record establishes that ASM is commercially interchangeable, and therefore is highly price sensitive. Sales were obviously lost because of price undercutting and in a market which is already burdened with lessening demand, "lost sales" can be a critical element in determining threat of injury. Absent some showing to the contrary, the Commission is presumed to have considered all evidence in the record. *Sprague Electric Company* v. *United States,* 2 Ct. Int'l Trade 302, 310, 529 F.Supp. 676, 682 (1981); *see also United States* v. *Chemical Foundation,* 272 U.S. 1, 14–15 (1926); *National Nutritional Association* v. *FDA,* 491 F.2d 1141 (2d Cir. 1974), *cert. denied,* 420 U.S. 946 (1975); *Braniff Airways* v. *CAB,* 379 F.2d 453 (D.C. Cir. 1976). Therefore, we find that the Commission's findings, in conjunction with the record which it is presumed to have considered, establish a threat of significant negative effects on prices.[24] *See* 19 U.S.C § 1677(7)(E)(ii) (1982); *see also* 19 C.F.R. § 107.27 (1983); Senate Report at 46, House Report at 88.

Plaintiffs also contend that the Commission failed to consider the impact of French ASM imports upon the domestic industry. We find that in making its threat of material injury determination,

> * * * the Commission shall consider, among other factors * * * (iii) The impact of imports of [the relevant] merchandise on domestic producers of like products.

19 U.S.C. § 1677(7)(B) (1982).

[24] Plaintiffs contend that nothing in the administrative record indicates that the Commissioners complied with the statutory directive to consider whether French ASM imports depressed domestic prices or prevented price increases. Plaintiffs confuse threat of injury with present injury. It is irrelevant that no price suppression occurred. It is clear the price suppression is threatened because of the threat of continued lost sales based on price.

Furthermore, as far as it is possible in evaluating the import of impacts upon the threatened industry:

> * * * the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—
>
> (I) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,
>
> (II) Factors affecting domestic prices, and
>
> (III) Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

19 U.S.C. § 1677(7)(C)(iii) (1982); 19 C.F.R. § 207.26(b)(3)(i)–(iii) (1983).

Plaintiffs claim that the majority's statement of confirmed "lost sales" is not an assessment of the effect of imports upon the United States ASM producers or production. The crux of plaintiffs' argument is that the majority did not show that the "lost sales" or any factor had caused an actual or potential decline in any injury factor mentioned in the statute. We reject this argument based upon our preceding discussion of "lost sales." Additionally, see the discussion *infra* of the "bulk" and "package" markets.

Also, plaintiffs allege that lost sales and underselling can only have meaning where they are compared to the production and sales of domestic ASM during the periods in which the lost sales occurred. This argument has no merit in a threat of injury context. There is no evidence in the legislative history or any policy concern apparent to this court which would suggest that lost sales and undercutting must be linked to *present* damage to overall sales, profits or production. In an industry such as this where continuous production is closely linked to profit, the Commission could find (this is the thrust rather than the exact wording of the determination) that lost sales indicated a threat to future sales, production and profitability.[25] Such a finding is also bolstered by the factors discussed in connection with import volume. Any argument that such less stringent requirements for a threat of injury case will make meaningless actual injury requirements, is defeated by the additional requirement in threat cases of the existence of demonstrable trends and capacities in specific areas. *See* footnote 11. For these reasons, we conclude that the Commission properly considered actual material injury standards in determining that there was threat of material injury.

Plaintiffs' next contention is that the Commission erred by basing its determination of threat of injury upon aggregated data for the domestic industry, rather than on the condition of each domestic producer. Plaintiffs argue that reliance upon aggregated

[25] This is not a *de novo* action and we may not substitute our judgment for that of the Commission; it is enough that the evidence was fairly susceptible of the Commission's interpretation. *See American Spring Wire Corporation* v. *United States*, Slip Op. 84-83 at 3.

data for all producers is not legally sufficient because the threat of injury must extend to all producers, or to those who account for a major proportion of domestic production. Plaintiffs complain that "[t]he Commission's determination did not discuss whether any individual ASM producer had suffered injury or threat thereof by reason of French imports." In particular, plaintiffs rely upon 19 U.S.C. § 1677(4)(A), the general definition of "industry", and *Atlantic Sugar, Ltd.* v. *United States (Amstar Corporation, Party in Interest)*, 2 Ct. Int'l Trade 295, 553 F. Supp. 1055 (1981).

Defendants argue that a plain reading of the statute shows that Congress authorized evaluation of aggregated data for the domestic industry. Defendants contend that the statutory definition refers to the industry "as a whole," or its "collective output," and therefore supports aggregation of industry-related data. *See* footnote 8; *compare* 19 U.S.C. § 1674(4)(c) (1982). We disagree that this issue can be determined by a simple reading of the statute. Whatever the words "as a whole," or "collective output" were meant to connote, they do not clearly and unambiguously condone aggregation of data for a national industry. Once again, the policies underlying the statute, in this case, the policy of utilization of the most reliable evidence, dictates the result.[26]

We find the *Atlantic Sugar* case instructive in this area. In the *Atlantic Sugar* case, the Commission issued an affirmative injury determination with respect to an eleven-state northeastern region in which seven producers were located. In determining that the industry in the region had suffered material injury, the Commisssion had averaged the corrected data which indicated a net profit for the period in question for the second largest producer in the region with the data for the other producers. The ITC found that aggregate profits in the region had declined. It rejected the argument that it was incorrect to aggregate data for the purpose of determining whether the "producers of all or almost all of the production" are materially injured. It reasoned that "the statute is concerned with determining whether a regional industry is being materially injured, not whether particular producers are injured." *Atlantic Sugar, Ltd.* v. *United States*, 2 Ct. Int'l Trade 295, 300 (1981).

The court rejected the Commission's position, holding that the Commission must consider injury to individual firms in determining whether there is injury to a regional industry:

> There is no justification for general or "aggregate" determinations which do not reflect the specific condition of individual

[26] Defendants set forth two additional arguments which we dismiss with only brief comment. First, defendants argue that Commission practice under the Antidumping Act of 1921 and Congress' intent that the existing practice continue under the Trade Agreements Act of 1979, defeat plaintiffs' position. Defendants have presented no authority or evidence that Commission practice was to evaluate aggregate data under predecessor law, and *assuming arguendo* that this was, in fact, the practice, defendants cite and we find no approval or specific endorsement of the particular practice in the legislative history pertaining to current law. Defendants' second argument that plaintiffs' (and this court's) interpretation of the aggregation principle would nullify or void presently available relief is circular in nature, and presupposes the correctness of defendants' interpretation that a different variety of relief exists in the first place.

> producers included in the "aggregate" * * *. Injury to an *industry* cannot be determined without first finding injury to individual producers * * *. It seems to the court that individual firm data are the foundation of this determination and it is only when the facts show injury to individual producers that they may be utilized for broader conclusions about the industry * * *.
>
> [T]he only aggregation permitted by the law is that of the production of those who have been injured individually. If their production represents all or almost all of the region's production then the *industry* has been injured within the meaning of the law.

Id. (footnote omitted).

The court further stated in that case:

> If there are producers who are not injured that fact must be confronted directly. *It is incorrect to nullify the profitable operation of one producer by blending it with the loss of another and presenting the result as an "aggregate" indication of injury to both.*

Id. at 301.

While the *Atlantic Sugar* court distinguished the case of injury to a national industry where only producers of a *major* proportion of production, as opposed to a regional industry, where *all or almost all* of the producers, must be injured, it did not negate the principle that aggregation is ordinarily inappropriate in either case.[27] Thus, we reject defendants' arguments that the *Atlantic Sugar* decision is flatly distinguishable from this case because it involved injury to a "regional" rather than to a "national" industry and that in any case, *Atlantic Sugar* is incorrect. But, we find that the Commission did not base its decision upon improperly aggregated data.

Plaintiffs argue that the evidence shows that only one of four domestic ASM producers could possibly be considered "threatened" with injury by French imports, and that this sole producer does not account for a "major proportion" of domestic ASM production. Presumably, plaintiffs base this argument on the fact that only one domestic producer, PQ, suffered serious economic losses, and thus "injury." [28] Whereas plaintiffs are correct on the law pertaining to

---

[27] We note that even this rule disfavoring aggregation of economic data has exceptions. Indeed, in a subsequent decision after remand in *Atlantic Sugar*, the court elaborated upon its earlier criticism of the use of aggregate data in an injury investigation, and recognized an exception. The court observed that, while the rule should be strickly enforced in circumstances where there are a limited number of producers, "the requirement of individual injury determinations may present insurmountable administrative problems where there are numerous producers." *Atlantic Sugar, Ltd.* v. *United States*, 4 Ct. Int'l Trade 248, 252, 553 F.Supp. 1055, 1060 (1982). The court concluded that in appropriate cases, the finding of injury may be based upon methods other than direct investigation. This case does not involve numerous producers.

[28] Plaintiffs pointed out at oral argument the current profitability of the industry. However, no single factor, including profitability, is conclusive or decisive in a material injury determination. *Atlantic Sugar, Ltd.* v. *United States*, 553 F.Supp. 1055, 1059 (1982); *accord American Spring Wire Corporation* v. *United States*, Slip Op. 84-83 at 5-6.

aggregation, their position fails in its application in a "threat" of injury context.

It is clear that the threat of material injury must be posed to a major portion of this national industry. Although PQ produced more than any other individual domestic producer, PQ did not produce a "major proportion" of ASM in relation to total domestic ASM production. Therefore, it is apparent that to sustain the ITC's finding in this case, this court must find that producer(s) in addition to PQ were threatened with injury and that their collective output represents a "major proportion" of total United States ASM production.

"Threat" of injury is necessarily a more diffuse standard than present injury. It is even less amenable to quantification than the present injury standard.[29] Moreover, nowhere in the legislative history, nor in any other source to which this court has turned, has there appeared the suggestion that the "threat" posed to one domestic producer need to be the identical threat posed to another. Nonetheless, producers of a major portion of production must be threatened with injury deriving from the same source of imports. Different producers might be faced with different types of "threat" or threat of greater or lesser injury, but this does not necessarily diminish the fact that threat exists. The court finds that based on the evidence discussed thus far in this opinion, the Commission could properly find threat to producers of "a major proportion" of production even though only a producer of a smaller portion of production suffered what seems to be *present* injury.[30]

Plaintiffs next contend that the Commission erroneously used a regional industry analysis in making its affirmative determination. At the outset, it must be recognized that the Commission analyzed a national industry, not a regional industry. A regional analysis is appropriate only in special statutorily prescribed circumstances.[31] The Commission majority expressly determined that a four state "Northeast market" does not meet the statutory criteria for a regional industry.[32] Any claim by plaintiffs that the ITC actually

---

[29] *See generally* Krauland, *The Standard of Injury in the Resolution of Antidumping Disputes*, Mich. Y.B. Int'l. Legal Studies 164 (1979) (academicians and practitioners alike have expressed a desire for a coherent body of law upon which they can rely with certainty with respect to a reliable standard of injury for antidumping disputes; however, articulation of "hard and fast" rules could hinder agency flexibility in enforcement of international trade laws.)

[30] It is clear from the record, particularly the evidence discussed in Commissioner Stern's opinion, that the Commission was not misled by any aggregation of data. Although the Commission could have stated its finding in this regard more clearly, what is clear from the record is that the thrust of the Commission's determinations amounted to the proper finding. *See American Spring Wire Corporation* v. *United States*, 1 Slip Op. 84-83 at 6.

[31] In certain cases, the ITC can consider whether a regional industry is harmed by LTFV imports, provided that:

> (i) The producers within such [regional] market sell all or almost all of their production of the like product in question in that market, and
>
> (ii) The demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

19 U.S.C. § 1677(4)(C)(i)(i)–(ii) (1982).

[32] The Commission majority stated:

> In this instance, the Northeast market is supplied by three plants, only one of which is located in the Northeast market. Both plants outside the area, one in Texas and the other in Illinois, ship significant quantities of ASM into the Northeast market, therefore disallowing the finding of a regional industry.

Final Determination at 8, n. 2.

conducted a regional industry analysis was abandoned at oral argument.

Plaintiffs' "regional industry" challenge raises the issue of whether in the present case the ITC impermissibly based its determination solely upon developments in the Northeast market in order to reach a determination of threat of injury to a national industry.[33] Plaintiffs argue that the Commission did not examine the Northeast market incidental to examining the ASM industry on a national scale, but rather, based its determination solely upon developments in the Northeast market.

It is clear after passage of the Act and, consequently, the statutory definition of "regional industry," that in cases where the Commission has determined the relevant industry to be a regional one, data from outside of the confines of the region may not be used to arrive at an industry determination. *Atlantic Sugar, Ltd.* v. *United States*, 2 Ct. Int'l Trade 295 (1981). The converse of this issue, and the question raised in this case is whether developments in a regional market may support a finding of threat of material injury for a national industry.

The issue of whether injury or threat of injury in a geographical region constitutes injury to an industry has a long and troubled history. *See* Wasserman, *Injury From Dumping: The Problem of the "Regional Industry,"* 9 Ga. J. of Int'l. and Comp. L. 469 (1979). Until 1979, the confusion caused by views expressed by the Senate Finance Committee in 1975[34] coupled with at least two and one-half decades of so many different views expressed by various Commissioners,[35] facilitated the support of almost any position which might have seemed appropriate in any particular situation. *See id.* at 486. In an effort to ameliorate the many problems which had arisen in this area, Congress enacted for the first time a statutory provision prescribing the scope and terms of the regional industry in the Trade Agreements Act of 1979.[36] Not all ambiguities, howev-

---

[33] Plaintiffs seem to have narrowed their original challenge, as they state in their final submission: "[p]laintiffs do not suggest that the Commission may not, as a matter of investigative technique, consider developments in particular regional markets."

[34] In considering the necessary causal relationship between LTFV imports and injury to an "industry," the Senate Finance Committee raised the question of whether injury to a "regional industry" constituted injury to a "national industry:"

> A * * * question relating to injury and industry arises when domestic producers of an article are located regionally and serve regional markets predominantly or exclusively and the less than fair imports are concentrated in a regional market with resulting injury to the regional domestic producers.

S. Rep. No. 93-1298, 93rd Cong., 2d Sess. 180-81 (1974).

In attempting to answer its own question, the Senate Committee held:

> * * * that injury to a part of the domestic industry [amounted to] injury to the whole domestic industry.

Id. at 181.

[35] *See, e.g., Sugar from Belgium, France and West Germany*, Determination of injury No. AA1921-198, 199, 200, U.S. ITC Publication 972, May 1979 (*compare* majority and concurring opinions); *Carbon Steel Plate from Taiwan*, Determination of injury or likelihood thereof, No. AA1921-197, U.S. ITC Publication 970, May 1979; *Portland Hydraulic Cement from Canada*, Determination of no injury No. AA1921-184, U.S. ITC Publication 918, September 1978 (each of three participating Commissioners concluding that American producers located in the Northeastern region of the United States constituted a regional industry; but one Commissioner determining that American producers not being injured by reason of imports; one Commissioner determining American producers were injured; and one Commissioner determining that it would be more "appropriate" to disregard the regional industry and consider the national industry).

[36] 19 U.S.C. § 1677(4)(c). Congress had previously amended the Antidumping Act on three separate occasions without resolving the problem of the regional industry.

er, were definitively resolved by the Act's passage, including the question of how to treat a case concerning producers from various regions and an investigation which concentrates on a more limited geographical market.

Government-defendant cites at length from the Customs Court decision in *Pasco Terminals, Inc.* v. *United States,* 83 Cust. Ct. 65, 477 F.Supp. 201, *aff'd* 68 CCPA 8, 634 F. 2d 610 (1980) for the proposition that "the Commission may properly consider the conditions in relevant sub-markets as a basis for material injury." Government-defendant's Memorandum at 26. In so citing, defendant suggests that a regional sub-market in and of itself may serve as the basis for finding threat of injury to a national industry. In the *Pasco Terminals* case, sulphur from Mexico being sold and offered at LTFV was found to be causing injury to a domestic industry. Although the Commission designated an industry which was national in scope,[37] its examination focused upon Tampa and the United States east coast where it found that LTFV sales and offers had contributed to general depression of prices and to market disruption.

Government-defendent relies upon this particular passage from *Pasco* approving the Commission's determination:

> Plaintiff's next argument is that there was no evidence adduced at the hearing that Azufrera had engaged in any disruptive activity in connection with sales to east coast customers albeit dumping duties were assessed on east coast shipments. But this argument overlooks the principle that under the Antidumping Act, a *national industry may be injured if injury is experienced in only a portion of its market.* See *Imbert Imports, Inc.* v. *United States, supra,* 60 CCPA at 127; *Ellis K. Orlowitz Co.* v. *United States,* 50 CCPA 36, 40–42, C.A.D. 816 (1963). Once an injury is found anywhere, the Constitution itself requires that any resulting dumping duties be uniformly assessed throughout the United States, wherever the merchandise is entered. Therefore, *even if the Commission had found that injurious events occurred only in Tampa, dumping duties still would have been properly assessed on merchandise entered on the east coast.*
>
> There is the further consideration that there was considerable evidence about the "ripple" or "spillover" effect of price reductions in the Tampa area into the east coast area. * * *

83 Cust. Ct. at 89 (Government-defendant's emphasis).

Because the highlighted portions of the cited passage are modified somewhat by the surrounding language and because the *Pasco* case also considers "spillover" effects, standing alone it will not sustain defendants' position. *See also Ellis K. Orlowitz Co.* v. *United States,* 200 F.Supp. 302, *aff'd,* 50 CCPA 36 (1963).

---

[37] The Commission designated the domestic industry as: "domestic facilities of U.S. producers devoted to mining and recovery of sulphur." 83 Cust. Ct. at 88.

Nonetheless, it appears to the court that in a case where producers from various regions operate in a given regional market, threat of injury in that market may be a threat to a national industry. In some circumstances this can be the early warning sign of which Congress spoke.[38] The significant question is how imminent and real is the threat to the national industry. As in *Pasco,* if there is demonstrable evidence of spillover to other markets, it is likely that the threat will be considered substantial. On the other hand, in a case where the sub-market under study is an insignificant segment of the whole market, injury in that market alone, even to numerous producers, may not result in a finding of threat to the national industry. We conclude, therefore, that a case by case analysis is necessary. *See Bethlehem Steel Corp.* v. *United States,* Slip Op. at 28.

In the present case, there is a variety of evidence upon which the Commission relied which indicates that it considered national or "spillover" effects, even though its investigation concentrated on the northeast region. By far, the most dramatic evidence that the Commission considered was Rhone Poulenc's expansion from that region into other areas of the country. While prior to 1979 the vast majority of Rhone Poulenc's sales were in the northeast, in 1979, this level dropped to 78% as the result of Rhone Poulenc's market expansion into such cities as Miami, Los Angeles, and San Francisco. The Commission found that "[t]his trend indicates that Rhone Poulenc is expanding its areas of import penetration with a deliberate marketing plan." Final Determination at 7.[39] In addition, the Commission relied upon other broad trends with national effects. Lost sales data were verified from several purchasers on the west coast who became newly-won customers of Rhone Poulenc. Moreover, Rhone Poulenc had established a series of regional warehouses and a United States sales network, which facilitated this expansion.[40] The evidence also indicates that the entire industry was vulnerable to LTFV imports of ASM, based upon dramatic decreases in United States consumer demand for and consumption of ASM, overcapacity of the industry, nationwide price sensitivity and general fungibility of the product, and the fact, which was noted by the Commission, that all questioned purchasers who "switched" to French ASM did so because of price. Also, Rhone Poulenc's share of the ASM market for the entire United States had increased. Therefore, we find there was no reliance by the Commission upon an analysis of an inadequate sub-market.

---

[38] Senate Report at 89; House Report at 47-48. *See also Matsushita Electric Industrial Co.* v. *United States,* 6 Ct. Int'l Trade at 21.

[39] In regard to market penetration, a sales manager for Rhone Poulenc testified at the hearing below that "what we are attempting to do * * * is to sort of spread out ourselves a little bit so we don't concentrate in any one area which is usually the reason why you get a petition, where we have grabbed in any geographical area too high a portion." Commission's Preliminary Injury Determination of June, 1980. USITC Publication 1080 at 26.

[40] The Commission also considered special shipping arrangements available to *Rhone Poulenc* which lowered transportation costs, thereby facilitating broader market penetration. *See* Final Determination at 7.

Plaintiffs next claim that the Commission improperly divided the relevant United States market for various types of ASM.[41] Plaintiffs claim that the Commission erred by basing its determination relating to the impact of imports on the United States "package" market and that the Commission should have based its analysis upon the entire United States market for ASM. Plaintiffs contend that the impact of imports should be considered relative to *total* production or consumption in the United States. They further assert that whether packaged or unpackaged,[42] domestic ASM is a "like product," and that no separate threat of injury may be ascribed to a package market.[43]

Defendants apparently argue, as they did with respect to the regional industry issue, that it is within the Commission's discretion and statutory authorization to rely upon data and developments relating to a competitive product sub-market, namely the "package" ASM market, in its consideration of trends indicating threat of injury. We need not decide this issue because we find that the Commission relied upon an analysis of the entire United States ASM industry.

In its determination, the Commission majority found national market penetration for the entire ASM market, as imports increased from 0.8 percent in 1977 to 4.4 percent in 1979. This represents an upward trend of over five-fold. However, the majority opinion did rely upon the so-called package market in particular.[44] The package market is a large portion of the total market.

Naturally, the increase in imports for the entire ASM market was not as dramatic as for the "package" ASM market, since French imports were shipped exclusively in packages. Nonetheless, strong demonstrable trends concerning production capacity, and marketing conditions and plans, which we have discussed previously support a finding of threat of material injury to the entire ASM industry.

For all the above-discussed reasons, we find that the decision of the Commission was based upon substantial evidence and is in accordance with law and that domestic producers of a major proportion of ASM are threatened with real and imminent injury due to the plaintiffs' imports.

---

[41] 19 U.S.C. § 1677(c)(iii) provides that:

> In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry.

[42] "Unpackaged" or "non-package" ASM refers to bulk and captive sales of the product.

[43] The Commission did decide that all ASM constituted the "like product." *See* footnote 7 for the definition of "like product."

[44] The package market takes on a special significance in this case because that is the only market in which the imported and domestic products compete. As stated at the public hearing, Rhone Poulenc currently cannot compete in the bulk market because of shipping problems * * *. While the Northeast market does not meet the statutory criteria for a regional industry [ ], it has been shown that the importer has captured an increasingly larger share of the area's package market, rising from 5.5 percent in 1977 to 25.3 percent in 1979.
Final Determination at 7–8 (footnote omitted).

Adjustments to Foreign Market Value

Plaintiffs challenge the ITA's determination that plaintiffs' sales of ASM in the United States were at less than fair value. The ITA's determination was based on the difference between the price Rhone Poulenc charged in the United States (United States price) and the price Rhone Poulenc charged in its home market, France (foreign market value). This price differential served as the basis for determining that Rhone Poulenc had made sales at less than fair value.

Plaintiffs' challenge to the ITA's calculation of the price difference centers on plaintiffs' contention that the ITA erred in failing to adjust the home market price to compensate for technical expenses incurred in the home market. Plaintiffs initially contend that the technical expenses were directly related to the sales under consideration. If so, then an adjustment must be made pursuant to 19 U.S.C. § 1677b(a)(4) (1982), requiring adjustments for different circumstances of sale. Alternatively, plaintiffs contend that the expenses were generally related to sales, and that plaintiffs are entitled to a full adjustment for these expenses pursuant to 19 C.F.R. § 353.15(c) (1983), without regard to the limitation contained in the regulation.

Defendant and intervenor contend that plaintiffs have not shown that the claimed expenses were directly related to the sales under consideration, and that, to the extent any expenses were adjustable as general selling expenses, the adjustment was properly limited by 19 C.F.R. § 353.15(c).

The expenses at issue were related to technical services Rhone Poulenc offered to its customers in France. Rhone Poulenc prepared technical studies describing the proper use of ASM. Rhone Poulenc maintained laboratory facilities to answer questions and deal with problems posed by its French customers. A chemist employed by Rhone Poulenc visited the customers to provide advice on site. Plaintiffs contend they are entitled to an adjustment covering publication costs for the technical studies, and the personnel and operating expenses of the travelling chemist, his secretary and the laboratory that are attributable to service for ASM customers during the period of the investigation.

The ITA will only adjust the foreign market value for differences in the circumstances of sale such as technical services expenses "if it is established to the satisfaction of the * * * [ITA] that the amount of any difference between the United States price and the foreign market value * * * is wholly or partly due to * * *" the technical services expenses. 19 U.S.C. § 1677b(a)(4), 19 C.F.R. § 353.15 (a), (b). Thus, plaintiffs have the burden of demonstrating to the ITA that they are entitled to a circumstances of sale adjustment for expenses directly related to sales. *Id.* The ITA determined that plaintiffs had not met this burden and denied the adjustment.

The ITA rejected plaintiffs' adjustment claim on the ground that plaintiffs failed "to document and to demonstrate that the technical services have a reasonably direct bearing on, relationship to, or effect upon the sales under consideration." Anhydrous Sodium Metasilicate From France; Antidumping—Final Determination of Sales at Less Than Fair Value, 45 Fed. Reg. 77498, 77499 (1980). The legislative history of the Trade Agreements Act of 1979 makes clear that Congress intended the ITA to require a direct relationship.

> [I]f adjustments are improperly made, the result may be an unjustifiable reduction in or elimination of the dumping margin. Therefore, the Committee intends that adjustments should be permitted if they are reasonably identifiable, quantifiable, and *directly related to the sales under consideration* and if there is clear and reasonable evidence of their existence and amount. (Emphasis added.)

H. Rep. No. 96-317, 96th Cong., 1st Sess. 76 (1979).

The record developed before the ITA details the basis for this determination. In a letter to plaintiffs' counsel, the ITA explained its policy concerning technical services adjustments:

> "* * * With respect to technical services performed in the home market, adjustment for expenses which are incurred regardless of whether a particular sale is made, such as technicians' salaries, would be inappropriate. Adjustments for expenses incurred only when sales are actually made, such as travel expenses in connection with after-sale technical services, are only allowable where such expenses are incurred by a foreign company in its home market for the purchaser in connection with the particular sale under consideration, rather than as a service provided for all potential purchasers * * *."
>
> The verification report * * * does not contain any indication that the research performed was related to the specific sales under consideration in this case. Rhone-Poulenc submitted to the Commerce Department representative neither contracts nor purchase orders which contained terms of purchase specifying that one of the terms of any individual sale was that Rhone-Poulenc would provide its purchaser certain technical assistance as a service to the purchaser. (Citation omitted.)

ITA Record [ITA R.] 80-81.

From this statement, the two primary bases for the ITA's determination are clear. The ITA will not adjust for any expense that would be incurred regardless of whether the particular sales under investigation are made. Thus, the ITA denied an adjustment for the salaries of permanent employees. And the ITA must be convinced that expenses related to sales are related to the particular sales under investigation, rather than sales generally, before the ITA will permit adjustment.

Congress has demonstrated its intent to rely on agency expertise in this highly technical area. *Smith-Corona Group* v. *United States,* 713 F.2d 1568 (Fed. Cir. 1983), *cert. denied,* 104 S. Ct. 1274 (1984). Still the court must carefully review the ITA's decision to ensure that it conforms to the underlying statutory requirement that antidumping margins be determined with a fair basis for comparison. *Silver Reed America, Inc.* v. *United States,* 7 Ct. Int'l Trade —, 581 F.Supp. 1290 (1984), *appeal docketed* No. 84-1118 (Fed. Cir. April 26, 1984).

As to the claimed adjustment for the cost of the technical studies and operating expenses, the ITA determined that plaintiffs had not shown the required direct relationship between the expenses and the sales under consideration.

Plaintiffs contend that the ITA improperly demanded that plaintiffs demonstrate that each claimed expense was performed as part of a contractual obligation for a particular sale under investigation. Plaintiffs are correct in noting that they need not attribute each expense claimed to a particular sale in order to qualify for a circumstances of sale adjustment. *See Smith-Corona Group* v. *United States,* 713 F.2d at 1580. But the ITA did not impose this burden on plaintiff.

The ITA sought evidence that the claimed services were performed to carry out the sales transactions at issue, rather than for purposes not directly related to the sales under consideration such as basic research or promoting good will and future sales. This distinction is critical given the statutory criteria for qualifying for a circumstances of sale adjustment. The "difference between the United States price and the foreign market value * * * [must be] wholly or partly *due to*" the claimed adjustment. 19 U.S.C. § 1677b(a)(4) (emphasis added).

This strict limit on adjustments for technical services is consistent with the basic purposes of the antidumping law. The antidumping law attempts to compare United States price and the foreign market value on as close to an equal basis as possible to determine whether the foreign manufacturer is charging a fair price in the export market. To calculate this, the ITA compares the price charged in the export market with the price charged at home and adjusts both prices to compensate for different marketing conditions in the respective markets. The statute and regulations permit adjustment for some expenses generally incurred in each market.[45] But otherwise, adjustments to the United States price are limited to specific costs or benefits involved in the transaction that directly change the sale price. Therefore, adjustments to foreign market must be similarly limited to provide a fair basis for comparison.

If Rhone Poulenc's sales obligations in France specifically included providing goods and technical services, and if Rhone Poulenc's sales obligations in the United States only included providing

[45] The proper scope of these adjustments is discussed *infra.*

goods, then there would be different circumstances of sale and the costs of the services would be directly related to the sales under consideration. But to the extent the technical services were provided for independent purposes such as basic research or promoting good will and future sales, it would be inappropriate to permit a circumstances of sale adjustment. Costs of basic research benefit both the domestic and export market. It would be unfair to adjust for such expenses in one market and not the other. Costs incurred during the period of investigation to promote good will relate to future sales and *ipso facto* do not directly relate to the sales under consideration.

From a careful review of the record it is clear that substantial evidence supports the ITA's conclusion that the technical services were not directly a part of Rhone Poulenc's sales obligations. Included in the verification report is a memorandum from plaintiffs' counsel to the Commercial Representative of the United States Embassy in Rome which details the precise nature of the technical services. This memorandum states that one of the principal duties of the technical services group is "to study new and different uses of ASM for the benefit of Rhone Poulenc's customers. New models of washing machines * * * are studied carefully in order to determine how various detergent formulations will work best in them." ITA R. 321. These employees' work was not merely directed toward assisting with the use of products sold during the period under consideration. But rather, a large part of the technical services group's work was directed towards research and maximizing future sales through developing new uses for plaintiffs' products.

This memorandum also indicates that expenses for publication of technical studies were not directly related to the sales under consideration. These studies were prepared to respond to customer problems. But these studies are often rewritten "in more general terms and place[d] * * * at the disposal of interested customers in order to make or promote specific sales." *Id.* at 322. Thus, the costs of studies published during the investigation period would, at least in part, be attributable to generating future sales, not the sales under consideration.

The ITA's decision that the salaries and related personnel expenses are not directly related to sales is clearly correct under the circumstances of this case. From the evidence in the record, it is apparent that the employees involved were Rhone Poulenc's permanent staff members. Salary and personnel expenses would have been incurred for these employees regardless of whether Rhone Poulenc made any sales at all during the period of the investigation. There is no direct relationship between these expenses and the sales under consideration. *Cf. Brother Industries, Ltd.* v. *United States,* 3 Ct. Int'l Trade 125, 150, 540 F.Supp. 1341, 1364 (1982), *aff'd,* 713 F.2d 1568 (Fed. Cir. 1983).

This is not to say that personnel expenses could never qualify as a technical adjustment. For example, a manufacturer that hires workers on a job basis to perform technical services may be able to qualify for a technical services adjustment if it can demonstrate which personnel expenses are incurred for the particular sales under investigation. In such a case, personnel expenses would not be fixed, but would be directly related to sales.

Plaintiffs argue generally that they must be entitled to a circumstances of sale adjustment because their expense figures were verified as accurate. This argument misconceives the purpose of verification. The verification report substantiated that plaintiffs had incurred the claimed expenses. The report does not purport to determine the legal significance of these expenses. A telegram from the verification office notes "the question remains, however, as to whether the expenses can be related to specific * * * [home market] sales." ITA R. 261.

Some portion of the claimed expenses may be related directly to the sales under consideration. But these adjustable expenses are not segregated from expenses more properly attributable to research and developing good will and future sales. This "indiscriminate lumping together [is impermissible]. * * * [I]t must be shown that each claimed expense had a reasonably direct effect upon the sales in the market under consideration." *F.W. Myers & Co., Inc.* v. *United States,* 72 Cust. Ct. 219, 233, 376 F.Supp. 860, 872 (1974). Therefore, the court finds the ITA determination that the technical expenses claimed as an adjustment were not directly related to the sales under consideration was based on substantial evidence in the record and was in accordance with law.

Alternatively, plaintiffs contend that even if these expenses are not directly related to the sales under consideration, plaintiffs are entitled to a full adjustment for all the costs of technical services under 19 C.F.R. § 353.15(c).[46] This regulation [the ESP offset] requires the ITA to adjust the foreign market value downward to compensate for all expenses generally related to sales. The regulation applies only in cases where dumping margins are determined by comparing the foreign market value with the exporter's sales price as opposed to the purchase price in the United States. 19 C.F.R. § 353.15(c). However, under the regulation, the ESP offset is limited to the extent a similar adjustment in the United States market reduces the exporter's sales price [the ESP offset cap]. Plaintiffs contend that this cap is invalid because it is unreasonable and contrary to the antidumping laws.[47]

---

[46] 19 C.F.R. § 353.15(c) reads in relevant part:

In making comparison using exporter's sales price, reasonable allowance will be made for all actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market.

[47] This issue was not presented to the ITA, but the court allowed plaintiffs to amend their pleadings to raise it here for the first time. *Rhone Poulenc S.A.* v. *United States,* 7 Ct. Int'l Trade —, 583 F.Supp. 607 (1984).

The ITA calculates dumping margins based on the exporter's sales price in cases where the exporter and the importer are related entities. In such cases, the product at issue is not sold in an arms length transaction until the importer sells to an unrelated entity in the United States. To calculate the exporter's sales price, the ITA determines the price the importer charged to the unrelated entity, and then adjusts for a variety of expenses to determine the price actually received by the manufacturer.

One of the adjustments required is a reduction in the exporter's sales price to compensate for "expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise." 19 U.S.C. § 1677a(e)(2). If a similar adjustment is not allowed for sales in the home market, then dumping margins would not be calculated on a fair basis. The exporter's sales price would be reduced to compensate for general selling expenses, but no parallel reduction would apply in the home market. This could lead to unfairly high dumping margins, or even a finding of less than fair value sales when sales in the United States were at prices no less than that charged in the home market.

The ESP offset is intended to prevent unfair comparisons by allowing an adjustment that reduces the foreign market value by "all actual selling expenses incurred in the home market." 19 C.F.R. § 353.15(c). This adjustment is not expressly required by statute. But the adjustment is proper since it is within the scope of administrative discretion and it furthers one of the primary goals of the antidumping law, the law "expressly requires a fair comparison." *Smith-Corona Group* v. *United States*, 713 F.2d at 1578.

The Federal Circuit affirmed the validity of the ESP offset in *Smith-Corona*. But the court there did not rule on whether the offset was properly subject to the cap limiting the offset to the amount of the adjustment for the selling expenses in the United States. *Id.* at 1579. Plaintiffs contend that the cap is contrary to the purposes of the antidumping laws. Defendants contend that the cap should be upheld because it provides a fair basis for comparison and because the court should defer to the ITA's expertise in administering the antidumping laws.

"When the issue is the validity of a regulation issued under a statute an agency is charged with administering, it is well established that the agency's construction of the statute is entitled to great weight." *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924, 928 (Fed. Cir. (1984)). The ESP offset cap must be sustained unless it is "unreasonable and plainly inconsistent with the statute * * * ." *Id.; Smith-Corona Group* v. *United States*, 713 F.2d at 1575. Congress has delegated substantial discretion to the ITA in the administration of the antidumping laws. But Congress has established general standards to guide the agency "and these must be followed.

The * * * [ITA] cannot, under the mantle of discretion, violate these standards or interpret them out of existence." *Id.* at 1571.

The validity of the ESP offset cap is directly reviewed in *Silver Reed.* There the court held that the cap is invalid because it is contrary to the purposes of the antidumping laws. The antidumping law requires adjustments to the foreign market value and United States price " 'so that value can be fairly compared on an equivalent basis.' " *Silver Reed America, Inc.* v. *United States,* 581 F. Supp. at 1293, *quoting Smith-Corona Group* v. *United States,* 713 F.2d at 1572. "Obviously, application of the cap thwarts a fair comparison * * * to the extent that fixed selling expenses must be deducted from the United States price * * * but deduction of similar selling expenses in the home market is arbitrarily limited." *Silver Reed America, Inc.* v. *United States,* 581 F. Supp. at 1295.

While *Silver Reed* is not binding on this court, the opinion in *Silver Reed* persuasively articulates this court's concerns with the fairness of the ESP offset cap. It is basically unfair to reduce the exporter's sales price for all selling expenses incurred in the export market without allowing a reduction for all selling expenses in the home market. If the exporter's sales price is determined absent all selling expenses, so must the foreign market value in order to provide the fair basis for comparison that is fundamental in determining whether dumping has occurred. This rationale justified the ESP offset in *Smith-Corona.* The same logic requires the court to invalidate the artificial restriction on the ESP offset contained in the cap. The ITA does not have discretion to ignore the basic principle behind the antidumping law in making the calculations that determine whether sales are at less than fair value.

At this point, ordinarily the court would remand this matter to the ITA for redetermination of whether plaintiffs made sales at less than fair value.[48] In light of the pending appeal in the *Silver Reed case,* the court finds this would be an inefficient use of administrative resources. The decision of the Court of Appeals may modify the result in this case.

THEREFORE IT IS ORDERED: plaintiffs' motion to set aside the determination of the International Trade Commission is denied. Plaintiffs' motion to set aside the determination of the International Trade Administration is granted. Remand to the ITA is stayed pending the decision of the Court of Appeals for the Federal Circuit in *Silver Reed America, Inc.* v. *United States,* No. 84-1118 (Fed. Cir. April 26, 1984).

Dated: New York, New York, this 19th day of July, 1984.

---

[48] It is unclear whether the ITA found that plaintiffs' claimed expenses were all generally related to sales for purposes of the ESP offset. The ITA must make that determination on remand.

JUDGMENT

JANE A. RESTANI, *Judge.*

RHONE POULENC, S.A., and RHONE POULENC, INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT and PQ CORPORATION, DEFENDANT-INTERVENOR

Court No. 81-1-00079

(Decided July 19, 1984)

This case having been submitted for decision and the Court, after deliberation, having rendered a decision therein; now, in conformity with that decision,

IT IS HEREBY ORDERED: Plaintiffs' motion to set aside the determination of the International Trade Commission is denied. Plaintiffs' motion to set aside the determination of the International Trade Administration is granted. Remand to the ITA is stayed pending the decision of the Court of Appeals for the Federal Circuit in *Silver Reed America, Inc.* v. *United States,* No. 84-1118 (Fed. Cir. April 26, 1984).

Dated: New York, New York, this 19th day of July, 1984.

Decisions of th
Court of Inter

Abs

Abstracted Pr

The following abstracts of decisions of the United published for the information and guidance of office decisions are not of sufficient general interest to print to Customs officials in easily locating cases and tracing

the United States
ternational Trade

Abstracts
Protest Decisions

DEPARTMENT OF THE TREASURY, *July 18, 1984.*

nited States Court of International Trade at New York are
fficers of the Customs and others concerned. Although the
print in full, the summary herein given will be of assistance
acing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSE
				Item No. and
P84/222	Newman, S.J. July 12, 1982	E. Gluck Corp.	83-3-00368	Merchandise marked "A" "B" was assessed at various rate under item 715.05 (716. 716.18) for modules, 72 or 720.28 fo cases and 7 for bands

SSESSED No. and Rate	HELD Item No. and Rate	BASIS	ENTRY AND MERCHANDISE
andise ked "A" or was ssed at ous rates er item 05 (716.14/ 18) for ules, 720.24 20.28 for s and 740.35 bands	Item 688.36 5.5% (prior to 1980), 5.3% (1980), 5.1% (1981), or 4.9% (1982), solid-state electronic watches and modules Item 656.25 25% if plated with gold (prior to 1980), 23.1% (1980), 21.3% (1981), 19.4% (1982); or under Item 657.35 if brass c.v., at .6¢ lb. plus 7.5% (prior to 1980), 7.4% (1980), 7.0% (1981), 6.7% (1982), or under Item 657.25 if steel c.v., at 9.5% (prior to 1980), 9.0% (1980), 8.6% (1981), 8.1% (1982); or Item 656.20 if coated or plated with palladium (platinum group), at 16% (prior to 1980), 14.9% (1980), 13.9% (1981), 12.8% (1982), watch cases	Executive Order 12371, July 12, 1982	New York Electronic watches, cases and bands

P84/223	Newman, S.J. July 12, 1984	E. Gluck Corp.	83-2-00303	Item 715.05 (716.14/7 for modu Item 720. 720.28 fo and 740.3 bands.
P84/224	Newman, S.J. July 12, 1984	Miami International Sportswear, et. ano.	79-8-01318	Item 807.00 rate appl to item(s) 380.81, 38 382.78, 38 with an allowanc item 807. cost or va fabric
P84/225	Newman, S.J. July 12, 1984	Sanyo Electric Inc.	80-2-00313	Item 720.14 37.5¢ eac 16%
P84/226	Ford, J. July 13, 1984	Diablo Systems Inc.	83-4-00604	Item 389.62 25¢ per l 15%

n 715.05, 16.14/716.18) r modules, em 720.24 or 0.28 for cases nd 740.35 for nds.	Item 688.36 5.5%, 5.3%, 5.1% or 4.9%, depending on the date of entry, modules, modules and cases, or modules, cases, and bands Item 656.25 (cases), plated with gold, or 657.35 brass c.v. or 657.25 steel c.v. at various rates depending on date of entry	Executive Order 12371, July 12, 1982	New York Electronic watches, cases and bands
n 807.00 at the te applicable item(s) 380.04, 0.81, 380.84, 2.78, 382.81 th an lowance under em 807.00 for st or value of bric	Item 807.00, with a duty allowance for the buttonhole and pocket slit components	United States v. Mast Industries Inc. 69 CCPA 47, C.A. 81-18, 668 F.2d 501 (1981)	Miami Shirts and pants
n 720.14 .5¢ each plus %	Item 685.24, as modified by Presidential Proclamation No. 4768, at 10.4%	Texas Instruments v. U.S., 1 CIT 236, Slip Op. 81-31 (1981), 518 F.Supp. 1341, aff'd 69 CCPA 136, C.A., 81-23 (1982), 673 F.2d 1375	San Francisco Clocks and electronic radios
n 389.62 ¢ per lb. plus %	Item 676.52 5.1%	Kores Manufacturing Corp. v. U.S., 3 CIT 178, Slip Op. 82-42, 545 F.Supp. 1303, aff'd CCPA Apr. 22, 1983, C.A. 82-33	San Francisco Ribbon-cartridges

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Item No. and
P84/227	Ford, J. July 13, 1984	Leather's Best Inc.	82-7-01056	Item 121.57 (19 entries) Item 121.58 (19 entries) Item 121.59 (19 and 1979 entries) Item 121.61 (19 1981, 1982, a 1983 entries)
P84/228	Ford, J. July 13, 1984	Leather's Best Inc.	83-1-00043	Item 121.57 (19 entries) Item 121.58 (19 entries) Item 121.59 (19 and 1979 entries) Item 121.61 (19 1981, 1982, a 1983 entries)

SESSED	HELD	BASIS	ENTRY AND MERCHANDISE
o. and Rate	Item No. and Rate		
21.57 (1976 es) 21.58 (1977 es) 21.59 (1978 979 es) 21.61 (1980, 1982, and entries)	Item 121.65 Free of duty G.S.P.	Agreed statement of facts	New York Leather
21.57 (1976 es) 21.58 (1977 es) 21.59 (1978 979 es) 21.61 (1980, 1982, and entries)	Item 121.65 Free of duty G.S.P.	Agreed statement of facts	New York Leather

Decisions of t
Court of Inte
Ab
Abstracted Reapp

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS VALUA
R84/292	Newman, S.J. July 12, 1984	Lady Manhattan, Div. of Manhattan Ind. and Amanda, Div. of Zodiac International	83-1-00158	Export valu

f the United States
ternational Trade

Abstracts
appraisement Decisions

BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
rt value	Actual f.o.b. value	Agreed statement of facts	New York Ladies wearing apparel

Index

U.S. Customs Service

U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 448-314

CB SER1A300SDISSDUE014R 1
SERIALS PROCESSING DEPT
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106